



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

July 28, 1993

*He*  
*the opinion on*  
*Q on p. 10*

NOTE TO: Tom Payzant, OESE  
Tom Corwin, M&B/CFO  
Jack Kristy, OGC

SUBJECT: Mark-up of charter schools draft

Please review the attached mark-up of the July 21 draft language for charter schools and let me know (by COB Thursday, if possible) if you think it accurately reflects the Under Secretary's decisions at today's meeting.

Thanks.

*Paul R.*

Paul Riddle

Attachment

JUL 21 1993

Revised following meeting with Under Secretary, 7/20/93

Charter Schools - ESEA, Title II, Part E

"PART E--CHARTER SCHOOLS

"FINDINGS AND PURPOSE

"SEC. 2501. (a) FINDINGS. The Congress finds that--

"(1) enhancement of parent and student choices among public schools can assist in promoting comprehensive educational reform and give more students the opportunity to learn to

challenging academic standards, if sufficiently diverse and high-quality choices, and genuine opportunities to take advantage of

such choices, are available to all students;

useful examples of such choices can come from (2) States and communities should therefore

experiment with methods of offering teachers and other educators, parents, and other members of the public the opportunity to design and implement new public schools;

"(3) the new schools developed through this process should be free to test a variety of educational approaches and should, therefore, be exempted from certain restrictive rules and regulations if their leadership commits to attaining specific and ambitious educational results for students consistent with

State content and student performance standards for students

"(4) charter schools, as they have been implemented in a few States, can embody the necessary mixture of enhanced choice, exemption from unnecessary restrictive regulations, and a focus on learning gains; and

"(5) the Federal Government should test, evaluate, and disseminate information on a variety of charter school models in

\* Are these references to standards adequate to reflect the Under Secretary's interest in them?

1 order to help demonstrate the benefits of this promising  
educational reform.

2 "(b) PURPOSE. It is the purpose of this part to increase  
3 national understanding of the charter schools model by--

4 "(1) providing financial assistance for the design and  
5 initial implementation of charter schools; and

6 "(2) evaluating those schools.

7  
8 "PROGRAM AUTHORIZED

9 "SEC. 2502. (a) GENERAL. The Secretary may make grants to  
10 eligible applicants for the design and initial operation of  
11 charter schools.

12 "(b) PROJECT PERIODS. Each such grant shall be for a period  
13 of not more than three years, of which the grantee may use--

14 "(1) no more than 18 months for planning and program  
15 design; and

16 "(2) no more than two years for the initial  
17 implementation of the charter school.

18 "(c) LIMITATION. The Secretary shall not make more than one  
19 grant to support a particular charter school.

20 "APPLICATIONS

21 "SEC. 2503. (a) APPLICATIONS REQUIRED. Any eligible  
22 applicant that desires to receive a grant under this part shall  
23 submit an application to the Secretary at such time and in such  
24 manner as the Secretary may require.

1.           "(b) SCOPE OF APPLICATION. Each such application may  
3 request assistance for a single charter school or for a cluster  
4 of schools, which may include a high school and its feeder  
5 elementary and middle schools, within a community.

6           "(c) APPLICATION CONTENTS. Each such application shall  
7 include, for each charter school for which assistance is sought--

8               "(1) a description of the educational program to be  
9 implemented by the proposed charter school; including--

10                   "(A) the grade levels or ages of children to be  
11 served; and

12                   "(B) the curriculum and instructional practices to  
13 be used;

14               "(2) a description of how the school will be managed;

15               "(3) a description of--

16                   "(A) the specific and ambitious educational  
17 results that the school will seek to attain; *→ for students*

18                   "(B) how those results relate to the State's  
19 content and student performance standards, if any, approved under  
20 title III of the Goals 2000: Educate America Act; and

21                   "(C) the methods by which the school will  
22 determine its progress toward achieving those results;

23               "(4) a description of the administrative relationship  
24 between the charter school and the local educational agency or  
25 State educational agency that will authorize or approve the  
school's charter and act as the grantee under this part;

*and to applicable local and school  
improvement plans under such title*

1           "(5) a description of how parents and other members of  
2 the community will be involved in the design and implementation  
3 of the charter school;

4           "(6) ~~(an assurance that)~~ *a description of how* the State or local educational  
5 agency, as the case may be, will ~~(assume full financial~~ *provide for*  
6 ~~responsibility for)~~ *continued* operation of the school once the Federal grant  
7 has expired, if such agency determines that the school is  
8 successful ~~(is this misleading, because Federal funds are for~~  
9 ~~planning and start-up, not for basic operation? What's the~~  
10 ~~purpose of this requirement?)~~;

11           "(7) a request and justification for waivers of any  
12 Federal statutory or regulatory provisions that the applicant  
13 believes are necessary for the operation of the charter school  
14 ~~(compare to §2508(1)(J)(ii))~~, and a description of any State or  
15 local rules, generally applicable to public schools, that will be  
16 waived for, or otherwise not apply to, the school;

17           "(8) a description of how the grant funds would be  
18 used;

19           "(9) a description of the extent to which the school  
20 will receive funds under, or otherwise participate in, other  
21 Federal programs administered by the Secretary;

22           "(10) a description of how all eligible students in the  
23 community will be--

24                   "(A) informed about the school; and

25                   "(B) given an equal opportunity to attend the  
26 school;

1 [Compare to language in definition of "charter school" relating  
2 to civil rights and lottery requirements, §2508(F) and (G). Do  
3 we want them to describe the lottery that they must have under  
4 §2508(G)?]

5 "~~(11)~~ an assurance that the school will comply with the  
6 civil rights statutes listed in section 2508(1)(F), and  
7 regulations thereunder [Should we delete here and rely on  
8 §2508(1)(F) and our civil rights regulations and standard grant  
9 application forms, which require this assurance of all applicants  
10 under all our programs?;

11 "~~(12)~~ an assurance that the applicant will annually  
12 provide the Secretary such information as the Secretary may  
13 require to determine if the charter school is making satisfactory  
14 progress toward ~~[its objectives]~~; and *→ achieving the desired*

15 "~~(13)~~ such other information and assurances as the *results described under*  
Secretary may require. *paragraph (3)*

16 "(d) STATE EDUCATIONAL AGENCY APPROVAL REQUIRED.--(1) A  
17 local educational agency that desires to receive a grant under  
18 this part shall obtain the State educational agency's approval of  
19 its application before submitting it to the Secretary.

20  
21 "(2) A State educational agency that approves an  
22 application of a local educational agency shall provide the local  
23 educational agency, and such local agency shall include in its  
24 application to the Secretary, a statement that the State has  
25 granted, or will grant, the waivers and exemptions from State  
26 requirements described in such local agency's application.

27 "SELECTION OF GRANTEES; WAIVERS

black protect

1 "SEC. 2504. CRITERIA. The Secretary shall select projects  
to be funded on the basis of the quality of the applications,  
2 taking into consideration such factors as--

4 "(1) the quality of the proposed curriculum and  
5 instructional practices;

6 "(2) the degree of flexibility afforded by the State  
7 and, if applicable, the local educational agency to the school;

8 "(3) the degree of innovation involved in the plan for  
9 the school;

10 "(4) the extent of community involvement in designing  
11 the school, and community support for the application;

12 "(5) the ambitiousness of the objectives for the  
13 school; and

14 "(6) the quality of the plan for assessing achievement  
of those objectives;

16 "(7) the likelihood that the school will meet those  
17 objectives and improve educational results for students.

18 "(b) PEER REVIEW. The Secretary shall use a peer review  
19 process to review applications for grants under this section.

20 "(c) DIVERSITY OF PROJECTS. The Secretary may approve  
21 projects in a manner that ensures that they--

22 "(1) are distributed throughout different areas of the  
23 Nation, including in urban and rural areas; and

24 "(2) represent a variety of educational approaches.

25 "(d) WAIVERS. The Secretary may waive any statutory or  
26 regulatory requirement that the Secretary is responsible for

1 enforcing, except for any such requirement relating to the  
elements of a charter school described in section 2507(1), if--

3 "(1) the waiver is requested in an approved application  
4 or by a grantee under this part; and

5 "(2) the Secretary determines that granting such a  
6 waiver would promote the purpose of this part.

7 ~~[Are there any limitations on the types of requirements that can  
8 be waived? See the limitations on the waiver authority we  
9 proposed in §113(c) of the Goals 2000 Act.]~~

10 "USES OF FUNDS

11 "SEC. 2505. A recipient of a grant under this part may use  
12 the grant funds only for--

13 "(1) post-award planning and design of the educational  
14 program, which may include--

15 "(A) refinement of the desired educational results  
16 and of the methods for measuring progress toward achieving those  
17 results; and

18 "(B) ~~training~~ <sup>professional development</sup> of teachers and other staff who will  
19 work in the charter school; and

20 "(2) initial implementation of the charter school,  
21 which may include--

22 "(A) informing the community about the school;

23 "(B) acquiring necessary equipment;

24 "(C) acquiring or developing curriculum materials;

25 and

26 "(D) other operational costs that cannot be met  
27 from State or local sources.

1 [As I read the specifications, we don't want to pay for pre-award  
2 costs. Is that right? Wouldn't such costs be a significant  
3 portion of the total cost of launching a charter school and  
4 successfully competing for a grant from us? If we wanted to, we  
5 could write this to allow grantees to reimburse themselves for  
6 those costs.]

7 "CONTINUATION AWARDS

8 "SEC. 2506. The Secretary shall not provide funding beyond  
9 the first year of any project under this part unless the  
10 Secretary determines that the grantee is making acceptable  
11 progress toward meeting the objectives of the project.

12 [Under EDGAR, 34 CFR 75.253(a)(2), the grantee must have either  
13 (i) "made substantial progress toward meeting the objectives in  
14 its approved application"; or (ii) obtained the Secretary's  
15 approval of changes in the project that: (A) do not increase the  
16 cost of the grant; and (B) enable the grantee to meet those  
17 objectives in succeeding budget periods. Do we dislike that test  
18 here? Is it too soft?]

19 6 "NATIONAL ACTIVITIES

20 "SEC. 2507. The Secretary may reserve up to ten percent of  
21 the funds appropriated for this part for any fiscal year for--

22 "(1) peer review of applications under section 2504(b);

23 "(2) a national evaluation of the program authorized by  
24 this part; and

25 "(3) other activities designed to enhance the success  
26 of such program, such as bringing grantees together to share  
27 ideas and information.

28 "DEFINITIONS

29 7 "SEC. 2508. As used in this part, the following terms have  
30 the following meanings:

Insert (J) from p. 10

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"(1) The term 'charter school' means a school that--

B ← "(A) is created by a developer as a public school, or is adapted by a developer from an existing public school;

C ← "(B) operates in pursuit of a specific set of educational objectives, including intended student learning gains, determined by the school's developer and agreed to by the State or local educational agency applying for a grant on behalf of the school;

D ← "(C) provides a program of elementary or secondary education, or both;

E ← "(D) is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

~~Are we trying to codify Establishment Clause case law here or what? See §800 of the current ESEA, which would apply.~~

F ← "(E) does not charge tuition;

*the Age Discrimination Act,*

G ← "(F) complies with title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, ~~[What about the Age Discrimination Act?]~~ and ~~[the substantive and procedural requirements and?]~~ safeguards of ~~]~~ part B of ~~]]~~ the Individuals with Disabilities Education Act;

H ← "(G) admits students on the basis of a lottery, if more students apply for admission than can be accommodated;

I ← "(H) agrees to comply with the same Federal and State audit requirements as do other schools in the State, unless

*delete: Replace with something else.*  
*Signature*

1 such requirements are specifically waived for the purpose of this  
program; *and*

2 " (1) meets all applicable Federal, State, and  
3 local health and safety requirements ~~and~~.

4  
5 (A) " (2) in accordance with State <sup>*an enabling*</sup> law, is exempted  
6 from various State or local rules <sup>*that inhibit the flexibility*</sup> governing the operation and  
7 management of public schools, ~~except~~ any rules relating to the  
8 other requirements of this paragraph. *but not from*

*to p. 9*

9 " (2) The term 'developer' means an individual or group  
10 of individuals (including a public or private nonprofit  
11 organization), which may include teachers, administrators and  
12 other school staff, parents, or other members of the local  
13 community in which a charter school project will be carried out.

14 " (3) The term 'eligible applicant' means a State  
15 educational agency or local educational agency, in partnership  
16 with a developer.

17 "AUTHORIZATION OF APPROPRIATIONS

18 "SEC. 250<sup>B</sup>. For the purpose of carrying out this part,  
19 there are authorized to be appropriated such sums as may be  
20 necessary for each of the fiscal years 1995 through 1999.

\* \* \* \* \*

7/1/93

Note to Mike Smith

Attached for your review is the first draft of legislative specifications for Arts in Education and Foreign Languages Education.

*Tom*  
Tom Corwin

Attachment

cc: Mary Jean LeTendre  
Alicia Coro  
Jack Kristy

SPECIFICATIONS FOR ARTS IN EDUCATION  
AND FOREIGN LANGUAGES EDUCATION

(Subparts 3 and 4 of Proposed ESEA Title II-C) --

Arts in Education

- o Purpose -- Authorize the Secretary to carry out a program of grants, contracts, or cooperative agreements for activities at the elementary and secondary level to: (1) strengthen arts education as an integral part of the elementary and secondary school curriculum; (2) help the Nation reach the goal of all students achieving demonstrated competence in the arts; and (3) help ensure that all students have the opportunity to learn to challenging standards in the arts.
- o Eligible recipients include LEAs, SEAs, IHEs, and other public and private agencies, organizations, and institutions.
- o Allowable activities -- The activities carried out under this subpart may include: (1) research on arts education; (2) development of, and dissemination of information about, model arts education programs; (3) development of model arts assessments based on high standards; (4) support for State efforts to develop and implement curriculum frameworks for arts education; (5) development of model preservice and inservice educator professional development programs in arts education; (6) collaborative activities with other Federal agencies (such as the National Endowment for the Arts, the Institute for Museum Services, and the Kennedy Center); and (7) such other activities as the Secretary deems appropriate.
- o Authorization -- "Such sums" for FYs 1995-1999.

Foreign Languages Education

- o Purpose -- Authorize the Secretary to carry out a program of grants, contracts, or cooperative agreements for activities at the elementary and secondary level to help the National reach the goal of all students achieving demonstrated competence in foreign languages and to help ensure that all students have the opportunity to learn to challenging standards in foreign languages.

- o Eligible recipients include LEAs, SEAs, IHEs, and other public and private agencies, organizations, and institutions.
- o Allowable activities -- The activities carried-out under this subpart may include: (1) research on foreign languages education; (2) development of, and dissemination of information about, model foreign languages education programs; (3) development of model foreign languages assessments based on high standards; (4) support for State efforts to develop and implement curriculum frameworks for foreign languages education; (5) development of model preservice and inservice educator professional development programs in foreign languages education; (6) collaborative activities with other Federal agencies; and (7) such other activities as the Secretary deems appropriate.
- o Authorization -- "Such sums" for FYs 1995-1999.



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF GENERAL COUNSEL

BS-  
DUE 7/16  
2 PM

JUL 14 1993

MEMORANDUM

TO: Legislative Services Officers  
 Attn: Mr. Ginsburg, OPP  
 Mr. Hazzard, OMB/CFD  
 Mr. Link, ES  
 Ms. Rairdin, GLCA  
 Mr. Wooten, OESE  
 Mr. Borches, OIG  
 Mr. Hays, OERI  
 Ms. Henderson, ODS  
 Ms. Lim, OCR  
 Mr. March, OSERS  
 Ms. Kirkgasler, OPE  
 Office of the General Counsel  
 Attn: Ms. Craig  
 Mr. Rosenfelt  
 Mr. Jenkins

FROM: Jack Kristy  
 Assistant General Counsel for Legislation

SUBJECT: Draft Bill Language on Arts Education and Foreign  
 Language Education

*Jack Kristy*

RECEIVED  
JUL 14 1993

Attached for your review and comment is draft bill language, for inclusion in the Department's proposal to reauthorize the Elementary and Secondary Education Act, to authorize discretionary grant programs in the arts and foreign languages. For your convenience, we have attached copies of the legislative specifications. Please review the draft bill language and forward your comments to me by COB Friday, July 16. I am in room 4093, FOB-6 and can be reached at 401-2670 (FAX-401-3769). Thanks for your prompt cooperation.

Attachments

cc: Ms. Winston  
 Mr. Winnick  
 Mr. Sky  
 Mr. Payzant

Mr. Smith  
 Ms. Dozier  
 Mr. Peterson

*See comments.  
T. Gwynn  
7/16-8:30*

*PB30714011*

Draft bill language on Arts Education

"SUPPORT FOR ARTS EDUCATION

JUN 13 1988

"SEC. 230. (a) PURPOSE. The purposes of this section are to--

(1) <sup>support systemic education reform by</sup> strengthen arts education as an integral part of the elementary and secondary school curriculum;

<sup>help</sup> (2) ensure that all students have the opportunity to learn to challenging standards in the arts; and

<sup>help the National reach the National Education Goal of all students</sup>  
<sup>help present and add standards to</sup> (3) ~~assist all students to demonstrate competence in~~ <sup>support the national effort to enable all students to</sup> the arts in accordance with the National Education Goals.

"(b) ELIGIBLE RECIPIENTS. In order to carry out the purposes of this section, the Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with,--

- (1) State educational agencies;
- (2) local educational agencies;
- (3) institutions of higher education; and
- (4) other public and private agencies, institutions, and organizations.

"(c) AUTHORIZED ACTIVITIES. <sup>or the Secretary is authorized to enter into</sup> A recipient of funds under this section may use such funds for-- <sup>grants, contracts, and cooperative agreements</sup>

- (1) research on arts education; <sup>for --- [we want to give the Secretary flexibility]</sup>
- (2) the development of, and dissemination of <sup>not the grantees</sup> information about, model arts education programs;

<sup>Including -- (see specs -- people want to highlight certain things)</sup>

(3) the development of model arts education assessments based on high standards;

(4) the development and implementation of curriculum frameworks for arts education;

(5) the development of model preservice and inservice professional development programs for arts educators;

(6) support for collaborative activities with other Federal agencies or institutions involved in arts education, such as the National Endowment for the Arts, the Institute <sup>of</sup> Museum Services, the John F. Kennedy Center for the Performing Arts, and the National Gallery of Art;

[(7) model programs or projects to integrate arts education into the regular elementary and secondary school curriculum;] and

(8) other activities that further the purposes of this section.

["(d) PARTICIPATION. A recipient of funds under this section shall, to the extent possible, coordinate its project with appropriate activities of public and private cultural agencies, institutions, and organizations, including museums, libraries, and theaters.]

["(e) COORDINATION] In carrying out this section, the Secretary shall coordinate with the National Endowment for the Arts, the Institute of Museum Services, the John F. Kennedy Center for the Performing Arts, [and the National Gallery of Art.]

Ed -  
Don't it "for"?

"(f) AUTHORIZATION. To carry out the purposes of this section, there are authorized to be appropriated such sums as may be necessary for fiscal year 1995 and each of the four succeeding fiscal years.

[Note: What arrangements need to be made to ensure preservation of the Kennedy Center and Very Special Arts programs now authorized in section 1564 of ESEA?]

*They are working on their own legislation —  
We need to continue working this with OMB.*

Draft bill language for foreign languages

"SUPPORT FOR FOREIGN LANGUAGE EDUCATION"

"SEC. 240. (a) PURPOSE. The purposes of this section are to--

Support the National effort to enable

- (1) ~~assist~~ <sup>help</sup> all students to demonstrate competence in foreign languages; and
- (2) ensure that all students have the opportunity to learn to challenging standards in foreign languages.

"(b) ELIGIBLE RECIPIENTS. In order to carry out the purposes of this section, the Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with,--

- (1) State educational agencies;
- (2) local educational agencies;
- (3) institutions of higher education; and
- (4) other public and private agencies, institutions, and organizations.

"(c) AUTHORIZED ACTIVITIES. A recipient of funds under this section may use such funds for--

Agun - clarify that these are the Secretary's choices

- (1) research on foreign language education;
- (2) the development of, and dissemination of information about, model foreign language education programs;
- (3) the development of model foreign language assessments based on high standards;
- (4) the development and implementation of curriculum frameworks for foreign language education;

(5) the development of model preservice and inservice professional development programs for foreign languages educators;

(6) support for collaborative activities with other Federal agencies; and

(7) other activities that further the purposes of this section.

"(d) AUTHORIZATION. To carry out the purposes of this section, there are authorized to be appropriated such sums as may be necessary for fiscal year 1995 and each of the four succeeding fiscal years.

7/9/93

Note to Jack Kristy

Attached are legislative specifications for Arts in Education and Foreign Languages Education. They would be Title II-C, Subparts 3 and 4 in the reauthorized ESEA and would replace Section 1564 and Title II-B of the current law. I have made minor changes, since the 6/30 draft, on the basis of suggestions from Mike Smith, Tom Payzant, and Alicia Coro.

As with the School Construction specs, these will not go into formal Departmental circulation prior to legislative drafting. All relevant offices should be given an opportunity to review and comment on the bill language.



Tom Corwin

Attachment

cc: Mike Smith  
Mary Jean LeTendre  
Alicia Coro

7/9/93

SPECIFICATIONS FOR ARTS IN EDUCATION  
AND FOREIGN LANGUAGES EDUCATION

(Subparts 3 and 4 of Proposed ESEA Title II-C)

Arts in Education

- o Purpose -- Authorize the Secretary to carry out a program of grants, contracts, or cooperative agreements for activities at the elementary and secondary level to: (1) support systemic education reform by strengthening arts education as an integral part of the elementary and secondary school curriculum; (2) help the Nation reach the goal of all students achieving demonstrated competence in the arts; and (3) help ensure that all students have the opportunity to learn to challenging standards in the arts.
- o Eligible recipients include LEAs, SEAs, IHEs, and other public and private agencies, organizations, and institutions.
- o Allowable activities -- The activities carried out under this subpart may include: (1) research on arts education; (2) development of, and dissemination of information about, model arts education programs, including programs that show promise of achieving excellence for all students in the arts and interdisciplinary programs that integrate arts education within a broader curriculum; (3) development of model arts assessments based on high standards; (4) support for State efforts to develop and implement curriculum frameworks for arts education; (5) development of model preservice and inservice educator professional development programs in arts education; (6) collaborative activities with other Federal agencies (such as the National Endowment for the Arts, the Institute for Museum Services, and the Kennedy Center) and with non-Federal agencies and organizations; and (7) such other activities as the Secretary deems appropriate.
- o Authorization -- "Such sums" for FYs 1995-1999.

Foreign Languages Education

- o Purpose -- Authorize the Secretary to carry out a program of grants, contracts, or cooperative agreements for activities at the elementary and secondary level

to: (1) support systemic education reform by strengthening foreign languages education; (2) help the Nation reach the goal of all students achieving demonstrated competence in foreign languages; and (3) help ensure that all students have the opportunity to learn to challenging standards in foreign languages.

- o Eligible recipients include LEAs, SEAs, IHES, and other public and private agencies, organizations, and institutions.
- o Allowable activities -- The activities carried out under this subpart may include: (1) research on foreign languages education; (2) development of, and dissemination of information about, model foreign languages education programs; (3) development of model foreign languages assessments based on high standards; (4) support for State efforts to develop and implement curriculum frameworks for foreign languages education; (5) development of model preservice and inservice educator professional development programs in foreign languages education; (6) collaborative activities with other Federal agencies and programs; and (7) such other activities as the Secretary deems appropriate.
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Draft bill language for foreign languages

"SUPPORT FOR FOREIGN LANGUAGE EDUCATION

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- (1) assist all students to demonstrate competence in foreign languages; and
- (2) ensure that all students have the opportunity to learn to challenging standards in foreign languages.

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- (1) State educational agencies;
- (2) local educational agencies;
- (3) institutions of higher education; and
- (4) other public and private agencies, institutions, and organizations.

"(c) AUTHORIZED ACTIVITIES. A recipient of funds under this section may use such funds for--

- (1) research on foreign language education;
- (2) the development of, and dissemination of information about, model foreign language education programs;
- (3) the development of model foreign language assessments based on high standards;
- (4) the development and implementation of curriculum frameworks for foreign language education;

*Get him to do it!!!*

*Strongly backs of from legislation*

*[Handwritten mark]*

*appeals individual and*

*note to Phil Cook*

(5) the development of model preservice and inservice professional development programs for foreign language educators;

(6) support for collaborative activities with other Federal agencies; and

(7) other activities that further the purposes of this section.

"(d) AUTHORIZATION. To carry out the purposes of this section, there are authorized to be appropriated such sums as may be necessary for fiscal year 1995 and each of the four succeeding fiscal years.

7/9/93

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Mary Jean LeTendre  
Alicia Coro

7/9/93

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AND FOREIGN LANGUAGES EDUCATION

(Subparts 3 and 4 of Proposed ESEA Title II-C)

Arts in Education

- o Purpose -- Authorize the Secretary to carry out a program of grants, contracts, or cooperative agreements for activities at the elementary and secondary level to: (1) support systemic education reform by strengthening arts education as an integral part of the elementary and secondary school curriculum; (2) help the Nation reach the goal of all students achieving demonstrated competence in the arts; and (3) help ensure that all students have the opportunity to learn to challenging standards in the arts.
- o Eligible recipients include LEAs, SEAs, IHEs, and other public and private agencies, organizations, and institutions.
- o Allowable activities -- The activities carried out under this subpart may include: (1) research on arts education; (2) development of, and dissemination of information about, model arts education programs, including programs that show promise of achieving excellence for all students in the arts and interdisciplinary programs that integrate arts education within a broader curriculum; (3) development of model arts assessments based on high standards; (4) support for State efforts to develop and implement curriculum frameworks for arts education; (5) development of model preservice and inservice educator professional development programs in arts education; (6) collaborative activities with other Federal agencies (such as the National Endowment for the Arts, the Institute for Museum Services, and the Kennedy Center) and with non-Federal agencies and organizations; and (7) such other activities as the Secretary deems appropriate.
- o Authorization -- "Such sums" for FYs 1995-1999.

Foreign Languages Education

- o Purpose -- Authorize the Secretary to carry out a program of grants, contracts, or cooperative agreements for activities at the elementary and secondary level

to: (1) support systemic education reform by strengthening foreign languages education; (2) help the Nation reach the goal of all students achieving demonstrated competence in foreign languages; and (3) help ensure that all students have the opportunity to learn to challenging standards in foreign languages.

- o Eligible recipients include LEAs, SEAs, IHEs, and other public and private agencies, organizations, and institutions.
- o Allowable activities -- The activities carried out under this subpart may include: (1) research on foreign languages education; (2) development of, and dissemination of information about, model foreign languages education programs; (3) development of model foreign languages assessments based on high standards; (4) support for State efforts to develop and implement curriculum frameworks for foreign languages education; (5) development of model preservice and inservice educator professional development programs in foreign languages education; (6) collaborative activities with other Federal agencies and programs; and (7) such other activities as the Secretary deems appropriate.
- o Authorization -- "Such sums" for FYs 1995-1999.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF GENERAL COUNSEL

CO-1

MEMORANDUM

TO: Legislative Services Officers

Attn: Mr. Ginsburg, OPP  
Mr. Hazzard, OMB/CFO  
Mr. Link, ES  
Ms. Rairdin, OLCA  
Mr. Wooten, OESE  
Mr. Borches, OIG  
Mr. Hays, OERI  
Ms. Henderson, ODS  
Ms. Lim, OCR  
Mr. March, OSERS  
Ms. Kirkgasler, OPE

Office of the General Counsel

Attn: Ms. Craig  
Mr. Rosenfelt  
Mr. Jenkins

FROM: Jack Kristy  
Assistant General Counsel for Legislation

SUBJECT: Draft Bill Language on Arts Education and Foreign  
Language Education

Attached for your review and comment is draft bill language, for inclusion in the Department's proposal to reauthorize the Elementary and Secondary Education Act, to authorize discretionary grant programs in the arts and foreign languages. For your convenience, we have attached copies of the legislative specifications. Please review the draft bill language and forward your comments to me by COB Friday, July 16. I am in room 4093, FOB-6 and can be reached at 401-2670 (FAX-401-3769). Thanks for your prompt cooperation.

Attachments

cc: Ms. Winston  
Mr. Winnick  
Mr. Sky  
Mr. Payzant

Mr. Smith  
Ms. Dozier  
Mr. Peterson

DRAFT

Draft bill language on Arts Education

\*SUPPORT FOR ARTS EDUCATION

*How about  
some funding  
to  
support  
it!*

"SEC. 230. (a) PURPOSE. The purposes of this section are to--

- (1) strengthen arts education as an integral part of the elementary and secondary school curriculum;
- (2) ensure that all students have the opportunity to learn to challenging standards in the arts; and
- (3) assist all students to demonstrate competence in the arts in accordance with the National Education Goals.

"(b) ELIGIBLE RECIPIENTS. In order to carry out the purposes of this section, the Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with,--

- (1) State educational agencies;
- (2) local educational agencies;
- (3) institutions of higher education; and
- (4) other public and private agencies, institutions, and organizations.

"(c) AUTHORIZED ACTIVITIES. A recipient of funds under this section may use such funds for--

- (1) research on arts education;
- (2) the development of, and dissemination of information about, model arts education programs;

(3) the development of model arts education assessments based on high standards;

(4) the development and implementation of curriculum frameworks for arts education;

(5) the development of model preservice and inservice professional development programs for arts educators;

(6) support for collaborative activities with other Federal agencies or institutions involved in arts education, such as the National Endowment for the Arts, the Institute of Museum Services, the John F. Kennedy Center for the Performing Arts, and the National Gallery of Art;

[(7) model programs or projects to integrate arts education into the regular elementary and secondary school curriculum;] and

(8) other activities that further the purposes of this section.

["(d) PARTICIPATION. A recipient of funds under this section shall, to the extent possible, coordinate its project with appropriate activities of public and private cultural agencies, institutions, and organizations, including museums, libraries, and theaters.]

["(e) COORDINATION. In carrying out this section, the Secretary shall coordinate with the National Endowment for the Arts, the Institute of Museum Services, the John F. Kennedy Center for the Performing Arts, [and the National Gallery of Art.]

*add school*

*lyr*

"(f) AUTHORIZATION. To carry out the purposes section, there are authorized to be appropriated such be necessary for fiscal year 1995 and each of the four fiscal years.

[Note: What arrangements need to be made to ensure preservation of the Kennedy Center and Very Special Arts programs now authorized in section 1564 of ESEA?]

*We need to transfer them*

JUL 28 1993

Comments from circulation of arts and foreign languages ESEA reauthorization language; draft Tsky 7/28/93

1. OMB comment: arts education; requires coordination with NEA with respect to NEA statutory authority as a condition to clearing.

(a) Proposal is not new authority. Authority for arts education is contained in Chapter 2. Removal would be a reduction in legislative authority.

(b) NEA, as we understand it, funds programs such as artists in schools and does not generally fund SEA or LEA activities.

(c) Proposed authority relates to education reform activities tied into Goals 2000 which may not be NEA emphasis.

(d) There is a paucity of support for arts education at the local level. Failure to continue the authority in Chapter 2, which this proposal in effect does, would send exactly the wrong message.

(e) Coordination with NEA should take place, if has not already taken place. A starting point would be an examination of the comprehensive report on education and the arts which NEA prepared several years ago. A copy is available in the Department.

(f) The coordination provision in the draft bill language should be retained in order to respond to questions about coordination.

2) Editorial comments-

(a) Should we include findings.

(b) Language changes needed to cut down possibly inflated purpose section.

(c) In foreign languages, should there be model projects to integrate foreign languages into the regular curriculum? *Yes*

(d) How should coordination with the international education programs and CIE be worked in? *No*

(e) For other comments, see individual submissions.

7/27/93

Note to Mike Smith

Subject: Arts in Education

I had a call from Ellin Nolan, who formerly worked on the Senate Education Subcommittee and now is with Clohan and Dean. Among her clients is the Very Special Arts organization.

Her message was thus: VSA has gotten wind of the Department's proposal to have them receive Federal funding through the Kennedy Center, instead of the Department, and doesn't want any part of it. It seems that they don't trust the Kennedy Center and believe the Center would try to keep VSA's money for themselves. (This could easily be prevented through appropriations language, but no matter.) She also said that VSA is quite content receiving its funding from the Department and wants to go on doing so. I said that I recalled that last year's Kennedy Center authorization bill, which almost made it through Congress, would have authorized appropriations for both organizations; this wasn't her recollection.

As a follow-up, I called the Kennedy Center and OMB to see where they stand on the direct appropriations issue.

The Kennedy Center (as represented by Gerry Otremba in their government relations office) says that they never did have any interest in getting a direct appropriation, that it was always OMB's idea. Their argument, in brief, is that being part of ESEA and statutorily connected with the Department gives them a prominent role in national education reform as it affects the arts (i.e., in Goal #3) and provides a vehicle for other involvement in ED activities, such as our new arts education strategy. Their explanation of last year's bill is that it would have "better articulated" their arts education mission without authorizing appropriations, although OMB would have preferred to place all Kennedy Center authorizations under a single statute. Kennedy Center officials expressed this view in a meeting with Department people a couple weeks ago and in a July 26 letter (attached) from James Wolfensohn to the Secretary.

OMB's position until now has been that they would still prefer to see the Kennedy Center receive a direct appropriation and that, while they would probably not make a big deal of it, we should terminate the sole-source deal with VSA and make the organization compete under a broader authority like FIE. They report, however, that the White House and the Kennedy Center are in the final stages of negotiating a Kennedy Center authorization bill which should be circulated in about a week. They believe the bill will authorize funding for education programs. [This raises the possibility that the Kennedy Center is trying to have it both ways.] For the time being, OMB doesn't really have a position on any of this.

We should discuss this at tomorrow's meeting on arts and foreign languages.

*Tom*

Tom Corwin

## The John F. Kennedy Center for the Performing Arts

JAMES D. WOLFENSOHN  
CHAIRMAN

WASHINGTON, D.C. 20566-0001  
202 416-8016  
FAX 202 416-8016

July 26, 1993

The Honorable Richard Riley  
Secretary of Education  
400 Maryland Avenue, S. W.  
Washington, D. C.

Dear Mr. Secretary:

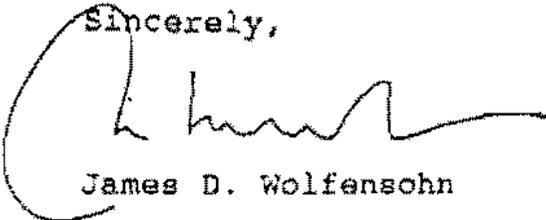
It has come to our attention that the Department of Education is considering the recommendation of direct grants to the Kennedy Center and Very Special Arts, in lieu of the grants currently made through the Department under the terms of the Arts in Education program.

I am writing to you to express my strongest wish that the current arrangement be continued. Kennedy Center has worked very hard to build a productive relationship with the Department through the grant process and the programs funded therein. I believe that such a move might also be misinterpreted by the field of arts educators, particularly as the Department, under your leadership, has moved to provide greater inclusion for arts education. As our staffs discuss ways to make the arts meaningful to education reform, the programs funded by the Department provide the ideal laboratory for considering effective programs.

It is conceivable that confusion may have arisen concerning authorizing legislation introduced last session regarding the Kennedy Center and its educational mission. Our purpose was to better articulate our education thrust but no change was made to the authorization of funding for our national education programs in Chapter 2 of ESEA. All of the materials we have submitted to the Department concerning ESEA continue the current granting arrangement.

If there are questions about this matter, I would be most appreciative if your staff could direct them to Geraldine Otremba, Associate Managing Director for Government Liaison at 416-8703. With warmest personal regards,

Sincerely,



James D. Wolfensohn



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202

Copy - Juke

JUL 28 1993

NOTE TO MIKE SMITH

SUBJECT: Arts in Education -- OMB Comments

This is in response to OMB comments on the Arts in Education proposed legislation for the ESEA reauthorization.

The Hawkins-Stafford Amendments of 1988 authorized the Secretary to carry out a program to encourage and assist state and local educational agencies and other organizations to conduct programs in which the arts are an integral part of the elementary and secondary school curriculum.

In the current reauthorization of the ESSA the Department proposes to continue its support of arts education and to focus the new authority on the overall strategy of school reform. The arts have been added to the third goal in the administration's reform legislation, the Goals 2000: Educate America Act. The intention of the proposed legislation is to encourage States and local education agencies to include the arts in their reform plans. This means that the arts in K-12 may be addressed in States' content and performance standards. The proposed ESEA three-pronged approach for supporting professional development, technical assistance and research-based practice would be applied to arts education as well as other core subjects. The goal would be that all school children would have the opportunity to learn to high standards in the arts as well as other subjects.

An equally compelling goal is that teachers are trained to develop skills that would allow them to use the arts as one of many tools to promote learning and expand student abilities in all subject areas. The purpose of arts in education programs supported by the Department of Education is to enhance general education and integrate arts in the elementary and secondary curriculum.

The National Endowment for the Arts funds projects and activities that relate to the schools. However, their main avenues of funding are to organizations, such as State Arts Agencies and arts service organizations, at the State and local levels. "Arts and cultural institutions and organizations" is NEA's preferred language for identifying the arts community and potential recipients of grant awards for the arts. In contrast, the Department's strategy would have a different focus, by supporting the major education entities -- SEAs, LEAs, schools and teachers, to include the arts in their reform initiatives.

The NEA's commitment to arts education began with the establishment of the Artists-in-Schools Program in 1969; by 1986 the program had evolved into the Arts in Education Program. This program began by supporting long-term, statewide programming and planning to include the arts in education, and is now directed toward increasing students' awareness, knowledge, and acceptance of the arts.

Currently, the Arts Endowment receives an appropriation of \$7.8 million (about \$1 million more than ED's \$6.9 million) for their Arts in Education program. To ensure that new efforts are complementary and not duplicative, the two agencies must engage in coordinating activities. One option is to establish an ongoing intra-Departmental or inter-Departmental working group composed of representatives from all relevant agencies and offices. The Office of Intergovernmental and Interagency Affairs (OIIA) is presently engaged in organizing and directing this interagency activity in the arts. The OIIA activity will be an expansion of coordinating activities that have been in process for the last few years on a smaller scale. For example, on July 12, Kennedy Center representatives met with ED staff to discuss collaborative activities between the two agencies. A major topic discussed was the Kennedy Center's progress in establishing a National Arts Education Information Network, a project supported with ED funds.

In the past year, an OERI team developed an agenda for "Educating America in the Arts." This included an ongoing arts partnership with the National Endowment for the Arts, national standard-setting in the arts, the planned NAEP arts assessment in 1996, development of a national arts education research agenda, collaboration on arts education projects with the Kennedy Center, and Department publications on arts education.

In FY 1994 NEA is requesting \$7.8 million dollars to support the following activities:

- |             |   |
|-------------|---|
| \$5 million | -Arts Education partnership grants to State Arts agencies to make the arts part of the school curriculum. |
| \$1 million | -Partnership grants with arts producing organizations and the schools (theater, dance, etc.)              |
| \$1 million | -Program collaborations with the arts disciplines (theater, dance, etc.)                                  |

\$800,000

-Special projects Initiatives, such as:

- a) Joint support with ED for the development of world-class standards for the arts
- b) Joint support with ED for a national Arts Education Information Network.
- c) Joint support with ED for development of a national assessment of arts achievement.

Support of arts in education by the two agencies is viewed as complementary rather than duplicative. OIIA sponsorship of an interagency coordinating effort will ensure that the activities supported by various Federal agencies are cooperative, collaborative, and complementary. It is the Department's position that both programs continue to be needed with the assurance that they will be administered in a complementary manner with areas of emphasis well defined.



Alicia Coro

cc: Tom Payzant

ATTACHMENT

Education Department Strategy for Arts Education

To support school reform that includes high quality arts education for all students, the Department needs a strategy that addresses key policy areas. The strategy outlined here contains new initiatives to support fundamental improvements at the state, local, and school levels, combined with appropriate activity at the national level, including a national consensus on arts standards, an ambitious arts research agenda, and other elements. Four basic areas will require continuing attention:

- o Support for including the arts in system-wide school reform at the State, local, and school levels.
- o Improved dissemination and communication;
- o A stimulating research agenda;
- o Strong national leadership in support of arts education.

Several overarching assumptions guide this discussion of the four areas. First, the overall goal must be excellence for all students, including students with disabilities and those with special talents. Second, arts education must take into account our increasingly diverse American culture as well as other world civilizations. Third, necessary resources will need to be provided at all levels--including national, State, and local--to support the type of systemic reforms needed. Fourth, the Department strategy is predicated on close and ongoing collaboration with other relevant agencies and institutions, especially the National Endowment for the Arts (NEA). While the NEA's support for arts education often flows to arts institutions and the Department's would be focused on schools, close coordination would be important for ensuring maximum effectiveness.

7/27/93

Note to Jack Kristy

Yesterday a group of us met with Connie Lee officials to discuss our proposal for amending the Higher Education Act to authorize the Association to insure and reinsure loans for elementary and secondary facilities. In the course of the meeting, I asked Mike if our bill should allow insurance for both public and private schools or only for public schools. He replied that it should cover only public schools. Please draft accordingly.

*Tom*

Tom Corwin

cc: Mike Smith



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF INTERGOVERNMENTAL AND INTERAGENCY AFFAIRS

JUL 30 1993

TO : Mike Smith  
Under Secretary

FROM : Stewart Tinsman  
Director  
International and Territorial  
Services Staff

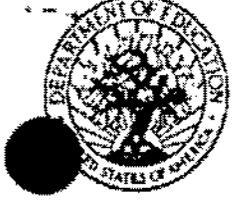
SUBJECT: Alicia Coro's Note of July 29 concerning International  
Activities in ESEA

At the current time OESE has no legislative mandate to participate in international activities, even when those activities are clearly of assistance to improving American education. The reauthorization of the ESEA should include authorization for the Secretary to conduct cooperative activities with other nations when such activities will be of benefit to education in the United States.

The world has changed and is changing rapidly. The United States no longer has all of the best answers to solving its educational problems. Other countries are incorporating massive reforms, some are surpassing us in academic achievement, and some are finding new ways to improve their education systems. Elementary and secondary education in the U.S. could benefit greatly through cooperation with a number of other nations, particularly Mexico and Canada. Such forms of cooperation go beyond research to include exchange, language instruction, resource materials, distance education, teacher education, joint assessment, etc. To ignore or prevent this opportunity would be detrimental to the attainment of our national education goals and be a deprivation to U.S. students who must face a rapidly changing, increasingly global economy at a time when our world grows smaller by the day. It is time for this Department to expand its horizons.

I urge you to consider Alicia's recommendation positively and include such international authorization in the ESEA.

cc: Ray Cortines  
Tom Payzant  
Tom Corwin  
Phil Rosenfelt  
Ted Sky  
Alan Ginsburg  
David Wofford



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-\_\_\_\_\_

JUL 29 1993

NOTE TO MIKE SMITH

Re: Addressing international activities in ESEA

Several weeks ago I shared with you a concern I have regarding the Secretary's lack of authority to support international activities that are not specifically related to OECD. This concern is not a geographically global one, but relates to issues educators face at the local level, primarily on the North American continent. For example, LEAs are responsible for educating the children of undocumented aliens, but the Secretary has no resources to discuss pressing education issues or share information with foreign education officials. There are other critical areas such as teacher exchange programs in core subject areas, e.g., math, science, foreign languages, drug prevention, etc., and/or cultural exchanges to enrich our programs that could be addressed.

I have discussed this concern with Tom Corwin, who believes it is not necessary to include this authority in ESEA; and Ted Sky, and Phil Rosenfelt, who have heard my arguments. I agree that an international type program, or project, can be currently funded under OERI's research authority. However, the Secretary may be interested in activities, in addition to research, that would contribute toward meeting the national goals and enhance the Department's stature in the international arena. I mentioned a teacher exchange program. Another example could be a joint evaluation of educational practices.

I propose to add language under cross-cutting issues, to give the Secretary authority to use program funds to support Secretarial initiatives that would address "areas of mutual concern to the United States and foreign countries that would enhance American education".

I have also discussed this concern with Stewart Tinsman, who whole heartedly supports the concept. Stu and I have personally (and painfully) experienced the lack of ED resources to engage in international activities that have a direct bearing on improving education in this country. I am not proposing to spend millions of dollars to support education in foreign countries; obviously, our domestic needs should be addressed first and foremost. There are other Federal agencies whose mission includes support for

Page - 2

education-related international programs on a large scale. I envision projects on a small scale, around \$200,000, more or less, that would address a particular initiative the Secretary may be interested in sponsoring. Having the authority to use program funds would facilitate these endeavors.

*Alicia Coro*

Alicia Coro

cc: Tom Payzant  
Ray Cortines  
Tom Corwin  
Phil Rosenfelt  
Ted Sky  
Alan Ginsburg  
Stewart Tinsman

# JOURNAL OF LAW &

# EDUCATION



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"Virtually Integrated Classrooms": Using the Internet to Eliminate the Effects of Unconstitutional Racial Segregation in the Public Schools—*Mark S. Davies*

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Equal Protection Analysis of All-Male Military Schools Following *United States v. Commonwealth of Virginia*

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# The Improving America's Schools Act and Elementary and Secondary Education Reform

RICHARD W. RILEY \*

## Introduction

In the Summer edition of this Journal, I summarized the progress that President Clinton's administration had made in building bipartisan support to achieve its agenda for promoting education reform in schools, colleges, communities, and local and state educational agencies.<sup>1</sup> That article, "Redefining the Federal Role in Education: Toward a Framework for Higher Standards, Improved Schools, Broader Opportunities and New Responsibilities for All," discussed those parts of the administration's agenda then implemented or enacted into law. These included the Goals 2000: Educate America Act (Goals 2000 Act),<sup>2</sup> the National Skill Standards Act,<sup>3</sup> the School-to-Work Opportunities Act,<sup>4</sup> the Safe Schools Act,<sup>5</sup> the William D. Ford Student Loan Reform Act,<sup>6</sup> other related initiatives in the area of post-secondary education, the National and

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\* Richard W. Riley is United States Secretary of Education. He served as Governor of South Carolina from 1979 to 1987.

\*\* I wish to express appreciation to the following staff members of the U.S. Department of Education: Tom Payzant formerly Assistant Secretary for Elementary and Secondary Education, Terry Peterson, Counselor to the Secretary, Marshall Smith, Under Secretary, and Leslie Thornton, Deputy Chief of Staff, for their many helpful comments and suggestions throughout the drafting process; to Ted Sky in the Office of the General Counsel for assistance in research, analysis, and organization, as well as other contributions; to Elizabeth DeBra, of the Office of Educational Research and Improvement, for her many helpful contributions and insights; and to the other staff members who assisted me in many respects. All these contributions are deeply valued and gratefully acknowledged. The laws that this article describes have benefited from the creative and effective work of these and many other dedicated individuals in the Department.

1. Richard W. Riley, *Redefining the Federal Role in Education*, 23 J.L. & Educ. 295 (1994) [hereinafter Riley].

2. See Pub. L. No. 103-227, titles I-III, 108 Stat. 125 (1994).

3. Pub. L. No. 103-227, title V, 108 Stat. 125 (1994).

4. Pub. L. No. 103-239, 108 Stat. 568 (1994).

5. Pub. L. No. 103-227, title VII, 108 Stat. 204 (1994).

6. Pub. L. No. 103-66, title IV, 107 Stat. 341 (1993).

Community Service Trust Act of 1993,<sup>7</sup> and the OERI Reauthorization Act.<sup>8</sup> I also outlined major provisions of the Improving America's Schools Act,<sup>9</sup> the Clinton administration's bill for the reauthorization of the Elementary and Secondary Education Act, the largest federal investment in kindergarten through high school.<sup>10</sup>

Since that writing, the Improving America's Schools Act (IASA) has been enacted into law as Public Law No. 103-382.<sup>11</sup> This article summarizes the IASA's major provisions. It provides additional information about the nation's continuing progress in enacting and implementing federal legislation designed to help parents, students, teachers, school administrators, business and community leaders and policy makers achieve the National Education Goals or their state's own challenging goals.<sup>12</sup>

## II. The IASA - A Summary

At the signing of the IASA on October 20, 1994 in Framingham, Massachusetts, President Clinton spoke about how the Improving America's Schools Act supports a renewed investment in America's children:

The important thing about this bill is that it represents a fundamental change in the way the Federal Government looks at how we should do our job in helping you students achieve those goals. For 30 years, the Federal Government has shipped money to the States and the local school districts to try to help with problems that needed the money. But mostly, they have done it in ways that prescribed in very detailed manner the rules and regulations your schools had to follow. . .

This bill changes all that. . . We will help develop measurements to see whether Framingham School District is meeting the goals. But you will get to determine how you're going to meet the goals, because the magic of education occurs between the teacher and the students in the classroom, with the parents, with the principals, with the schools supporting it.<sup>13</sup>

The IASA is one of the major legislative accomplishments of the first two years of President Clinton's administration. It is designed to help communities

7. Pub. L. No. 103-82, 107 Stat. 785 (1993).

8. Educational Research, Development, Dissemination, and Improvement Act of 1994, Pub. L. No. 103-227, title IX, 108 Stat. 212.

9. H.R. 3130, 103rd Cong., 1st Sess. (1993).

10. Riley, *supra* note 1, at 329-39.

11. Pub. L. No. 103-382, 108 Stat. 3518 (1994).

12. Goals 2000 Act, title I.

13. Remarks on Signing the Improving America's Schools Act of 1994, 30 WEEKLY COMP. PRES. DOC. 2084, 2086 (Oct. 24, 1994).

raise educational standards, the quality of teaching in schools, and the performance of all students.<sup>14</sup> The IASA provides a six year reauthorization of programs of federal aid to education by amending the Elementary and Secondary Education Act of 1965 (ESEA) and certain other laws. It does so in a way designed to render these programs more effective while broadly expanding the flexibility available to state and local educational agencies in administering them.<sup>15</sup>

The IASA is, however, far more than a reauthorization. It represents a change in the direction and structure of federal aid to education. To understand this, some historical perspective is useful.

As originally enacted in 1965, Title I of the Elementary and Secondary Education Act, which provides assistance to meet the special educational needs of educationally deprived children and other federally assisted elementary and secondary programs, allowed for supplementary assistance over and above what states and local communities could offer. These programs were in essence add-ons.

However, these programs were not fully integrated into the delivery of day-to-day state and local educational services. Typically, federal categorical programs involved discrete requirements that obliged state and local educational agencies to identify specified target populations or activities and serve them with programs that could be separately accounted for. Entry into the program required submission of a state or local plan or application not fully related to other state and local efforts to improve education. Successive reauthorizations after 1965 added new categorical programs or embellished old ones but did not make the connections that would have given federal aid a more significant role in what states and communities were trying to achieve with their own resources.

In the 1980s, spurred in part by the Department of Education's issuance of *A Nation at Risk*, states and communities embarked upon broad and far-reaching education reform efforts, some of which involved the development of challenging student content and performance standards.<sup>16</sup> Again, federal programs were not fully integrated with this reform movement, although in the Education

14. See Goals 2000 Act, title I.

15. Pub. L. No. 103-382, the IASA is amendatory legislation. It amends the Elementary and Secondary Education Act of 1965 (ESEA), Pub. L. No. 89-10, 79 Stat. 27 (codified as amended in scattered sections of 20 U.S.C.) by rewriting that act in its entirety. Hereinafter, references to Pub. L. No. 103-382 will be to the IASA. References to the legislation that the IASA amended and to provisions of that legislation will be to the ESEA or the "amended" ESEA, unless otherwise noted.

16. Some of this history is described in Riley, *supra* note 1, at 305-310. (Hereinafter references to the Dept. of Education are to the U.S. Dept. of Ed. unless otherwise indicated.)

Amendments of 1988, some limited effort was made to tie the administration of the Chapter 1 program to the challenging standards that states were developing.

The IASA changes this. It continues to provide for federal resources, and for appropriate targeting on special populations and activities in order to implement the twin federal missions of encouraging access and excellence and to maintain accountability. However, it does so in a way that relates the programs more closely to the reform and other activities that states and communities are initiating to ensure improved education for all their students.

The IASA does this in part by more clearly tying the administration of federal programs to the emergence of challenging state content and performance standards and assessments aligned to those standards.<sup>17</sup> In the Title I program, for example, the new law ensures that the performance of Title I students will be assessed in accordance with the same challenging state content and performance standards that the state applies to all students. Other ESEA resources are available to help states and communities put in place the standards and assessments that they adopt. The new ESEA has become a standards-based set of federal programs, as a result of the changes made by the IASA.

At the same time, the IASA makes the manner of delivering federal education resources more flexible and less prescriptive than in the past, by affording states and communities the opportunity to obtain relief from requirements determined to impede quality instruction or academic performance and to streamline state plan submissions, as well as a broadened opportunity to focus Title I and other resources on the entire school rather than specified children within the school.

In short, the IASA provides for the delivery of limited federal dollars in ways that are more effective, more coherent, and less prescriptive than in the past in order to help states and communities reach the National Education Goals as well as their own educational objectives.

How is this accomplished? A few of the major changes are mentioned in this summary. Others are described in the body of this article.

- The IASA has been enacted within the framework of the Goals 2000; Educate America Act, which establishes the National Education Goals and

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17. See MARSHALL SMITH, UNDERSECRETARY, U.S. DEPT. OF EDUC., EDUCATION REFORM IN AMERICA'S PUBLIC SCHOOLS, THE CLINTON AGENDA (1995). The term "content standards" is defined in the Goals 2000 Act § 3(4) to mean the "broad descriptions of the knowledge and skills students should acquire in a particular subject area." The term "performance standards" means "concrete examples of what students have to know and be able to do to demonstrate that such students are proficient in the skills and knowledge framed by content standards." Goals 2000 Act § 3(9); See Phi Delta Kappa Int'l and Inst. for Educ. Lead., Nat'l Issues in Ed. Elem. & Sec. Ed. Act (John Jennings, ed., 1995).

provides resources and incentives to states and communities to develop content and performance standards and to carry out other comprehensive reform efforts.<sup>18</sup>

- The Title I statute connects with these reforms by asking states to develop or acquire content and performance standards designed to assist students in schools served by Title I to achieve to the same high standards expected of all students.<sup>19</sup>
- Title I targeting on high poverty schools is improved, and Title I services may be delivered through schoolwide programs in a significantly greater number of title I schools, where reform must take root.
- The Title I statute gives new emphasis to parental participation and strengthens measures to foster improvement for failing schools and rewards for successful ones.
- Title II of the ESEA authorizes substantial resources for the sustained and intensive high-quality professional development that is essential if challenging academic standards are to take hold in all the core subjects.
- Title IV provides for federal assistance to ensure a school atmosphere that is violence-, drug-, and alcohol-free.
- Title VII of the ESEA, the Bilingual Education Act, is restructured to tie that act more closely to learning English and other major subjects to high academic standards.
- The ESEA provides assistance to enhance national understanding of the public charter school model.
- Provision is made to help states and communities use their resources more effectively through a new networked system of comprehensive regional technical assistance centers and acquisition of technology.
- Title XIV of the ESEA makes specific provision for new flexibility mechanisms, such as waivers at the state and federal levels and optional consolidated state and local plans, a new mechanism to

18. See Riley, *supra* note 1, at 315-329, for a discussion of the Goals 2000 Act.

19. See SMITH, *supra* note 17, at 14 ("The difference in this reauthorization is that the focus is on enhanced opportunities for [the neediest] students to learn to the same challenging standards as other, more advantaged, students in their districts and states.").

help states and communities pull the pieces and players together.<sup>20</sup>

In sum, the IASA sets five clear priorities or directions that tie together the act's components: (1) higher standards for all children, with the elements of education aligned, so that everything is working together to help all students reach those standards; (2) a focus on teaching and learning; (3) flexibility to stimulate local school-based and district initiatives, coupled with the responsibility for student performance; (4) links among schools, parents and communities; and (5) resources targeted to where needs are greatest in amounts sufficient to make a difference.<sup>21</sup> In implementing these principles, the IASA strengthens the capacity of states and communities to solve their own educational problems. It builds on what has been learned from federal assistance in past decades that will better prepare students for the 21st century.

### III. Purposes

Bipartisan support for the major changes and improvements made by the IASA and by passage of the Goals 2000: Educate America Act was an important feature of both legislative accomplishments. Senator Kennedy (D-Mass.) described the purposes of the IASA during the debate on the conference report on H.R. 6:

This bill is a major reform in Federal aid to help improve elementary and secondary education throughout the Nation. It is the most important reauthorization of ESEA since that landmark act was first passed in 1965.

It is a very significant step forward, because it puts the Federal Government squarely behind the reform efforts that are taking place in States and school districts throughout the country. The truly innovative feature of this legislation is that it encourages these local reforms without dictating them from Washington.<sup>22</sup>

During Senate debate on the conference report, Senator Kassebaum (R. Kan.) specifically focused on the flexibility afforded by the IASA:

[The IASA] provides greater flexibility for schools to combine Federal elementary and secondary education program funds in order to provide education services in a more coordinated and comprehensive way. It reduces

20. The Education Flexibility Partnership Demonstration Program, discussed below in this article, is authorized under the Goals 2000 Act but provides for state waivers under specified ESEA programs. See text *infra* following note 167.

21. U.S. DEPT OF EDUC., IMPROVING AMERICA'S SCHOOLS ACT OF 1993, at 5-16 (1993) (hereinafter referred to as PROSPECTUS) (unless otherwise indicated, cites to *Intro.*).

22. 140 CONG. REC. 514,153 (daily ed. Oct. 3, 1994).

paperwork for schools and teachers by providing for combined applications for Federal aid under multiple education programs.<sup>23</sup>

Almost every state has now availed itself of this opportunity by submitting a preliminary consolidated plan for its fiscal year 1995 IASA funds.

Representative Goodling (R. Pa.), while describing his concerns about certain aspects of the bill, expressed support for a significant provision of the IASA affording greater flexibility to states, communities and schools. He observed:

I am pleased by the inclusion of the broad waiver provisions in title IX [title XIV in the IASA], which will allow schools, local educational agencies, and States to receive waivers from Federal requirements and regulations under this act which impede their ability to improve student learning and achievement.<sup>24</sup>

Senator Jeffords (R. Vt.), during the conference report debate, shared his perceptions on the significance of the legislation.

This bill fundamentally changes the status quo by demanding high academic standards and encouraging the philosophy that all children can learn. And it states in no uncertain terms that poor children do not deserve a poor education.<sup>25</sup>

As stated in the House report on H.R. 6, the House passed version of the administration bill (H.R. 3130):

H.R. 6, the Improving America's Schools Act of 1994, reauthorizes most of the Federal Government's programs of aid to elementary and secondary education. These programs are principally included in the Elementary and Secondary Education Act of 1965, and provide approximately \$10 billion of assistance to states and local school districts.

The purpose of H.R. 6 is not only to extend the authorizations of these programs; it is also to reshape these programs so that the Federal Government better assists states and local school districts as they reform the public schools. Most of these programs were fashioned in the 1960s before the current wave of school reform began, and thus they are in need of updating to fit better into how states and school districts are making education more appropriate to meet today's demands.<sup>26</sup>

23. *Id.* at S14,150.

24. 140 CONG. REC. H804, at H805 (daily ed. Feb. 24, 1994). Representative Goodling did not support the adoption of the conference report on the bill during the vote on final passage. 140 CONG. REC. H10,408 (daily ed. Sept. 30, 1994).

25. 140 CONG. REC. S14,193 (daily ed. Oct. 5, 1994).

26. H.R. REP. NO. 425, 103rd CONG., 2nd SESS. 3 (1994).

In describing H.R. 6 (the House version of the IASA) during House debate on that bill, Representative Ford of Michigan shared his personal perspective on its historical significance:

[In] the 89th Congress, 1965, my first year here, we created the Elementary and Secondary Education Act, which we are reauthorizing for the ninth time today. I am extremely pleased that in the 103d Congress, my last Congress, we are making the most important changes in the act since we first passed it. We are bringing it into position where it will serve well, and adjust well to the 21st century.<sup>27</sup>

Representative Gunderson (R. Wis.) also reflected on the historic importance of the legislation and the need for bipartisanship in its consideration:

This is the last reauthorization to have any impact on the structure of America's education delivery system, as we enter the 21st century. That is why it becomes so essential that education policy be done in a bipartisan manner.<sup>28</sup>

These objectives are reflected in the IASA as passed by the Congress by a vote (on final passage) of 262 to 132 in the House and 77 to 20 in the Senate<sup>29</sup> and signed by President Clinton on October 20, 1994.

#### IV. Relationship to Goals 2000: Educate America Act

What is different about the IASA as compared with prior elementary and secondary reauthorizations is that the IASA has been preceded by and placed within a better, more balanced legislative framework. That framework is the Goals 2000: Educate America Act. As Representative Kildee stated during the House floor debate on the bill:

Last year the House passed the Goals 2000: Educate America Act, which establishes a new framework for the Federal Government to provide school reform assistance. H.R. 6 helps to fill in the framework by refashioning Federal programs so that they are an integral part of State and local school reform efforts.<sup>30</sup>

27. 140 CONG. REC. 801 (daily ed. Feb. 24, 1994). Rep. Ford was chairman of the House Committee on Education and Labor which reported favorably on H.R. 6 in the 103rd Congress.

28. *Id.* at H806. Rep. Gunderson did not support the legislation in the vote on the conference report on September 28, 1994. 140 CONG. REC. H10,408 (daily ed. Sept. 30, 1994).

29. 140 CONG. REC. H10,408 (daily ed. Sept. 30, 1994); 140 CONG. REC. S14,207 (daily ed. Oct. 1994).

30. 140 CONG. REC. H803 (daily ed. Feb. 24, 1994).

Like the Goals 2000 Act, the IASA is designed to encourage comprehensive education reform. A primary focus of the IASA is on teaching and learning, as well as on higher standards for all students. The IASA encourages the alignment of all of the elements affecting teaching and learning (including curriculum, instruction, professional development, school leadership, student assessment, and parent involvement) so that the whole is greater than the sum of the parts.<sup>31</sup>

The Goals 2000 Act and the IASA, two major federal investments in local and state efforts to improve education, both enacted during the first two years of the Clinton administration, are closely related in the following respects.

The Goals 2000 Act establishes as national policy a set of eight voluntary National Education Goals and provides funding to schools, communities and states to design action plans to meet these goals or their own goals.<sup>32</sup> The IASA provides for needed federal financial and technical assistance to help the nation meet these goals, particularly in schools with special needs. For example, Title IV of the amended ESEA, the Safe and Drug-Free Schools and Communities Act, provides assistance to states for drug, alcohol and violence prevention programs. These programs will help achieve one of the National Education Goals: "By the year 2000, every school in the United States will be free of drugs, violence and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning. . . ."<sup>33</sup>

A state improvement plan under Title III of the Goals 2000 Act must include strategies for the adoption of challenging academic standards.<sup>34</sup> Sustained and high quality professional development, educational technology, and technical assistance provided under the IASA will support the integration of comprehensive, effective state and local reform efforts into the classroom.<sup>35</sup>

In the Goals 2000 Act Congress finds: "[A]ll students can learn and achieve to high standards and must realize their potential if the United States is to

31. PROSPECTUS, *supra* note 21, at 6. The manner in which the five priorities or directions are reflected in the IASA is discussed more fully *infra* following note 186.

32. Goals 2000 Act § 102. The Goals are stated in Riley, *supra* note 1, at 321, and include:

(1) school readiness; (2) school completion; (3) student achievement and citizenship; (4) teacher education and professional development; (5) mathematics and science; (6) adult literacy and lifelong learning; (7) safe, disciplined and alcohol- and drug-free schools; and (8) parental participation.

33. ESEA, title IV-A; Goals 2000 Act § 102(7). See 140 CONG. REC. S14,147 (daily ed. Oct. 5, 1994) (remarks of Sen. Pell).

34. Goals 2000 Act, title III. As of this writing, 46 states are participating in the program under Title III of the Goals 2000 Act. See U.S. DEPT. OF EDUC., REMARKS OF RICHARD W. RILEY, U.S. SECRETARY OF EDUC., SECOND ANNUAL STATE OF AMERICAN EDUCATION ADDRESS 3 (Feb. 1, 1995) (Since that address, an additional 4 states applied for assistance under the Goals 2000 legislation).

35. ESEA, titles II, III, XIII; see SMITH, *supra* note 17, at 14-15.

prosper."<sup>36</sup> This statement in the Goals 2000 Act is at the core of this administration's aspirations for American education. To achieve these aspirations, we must effectively confront the realities reflected in two congressional findings in the IASA: (1) between disadvantaged and other children a "sizeable [achievement] gap remains" and (2) "educational needs are particularly great for low-achieving children in our Nation's highest poverty schools."<sup>37</sup> To do this, the IASA asks a state's Title I students to meet the challenging content and performance standards that the state sets for all of its students. The IASA also targets funds to the highest poverty schools and, in an effort to address needs at levels closest to students and teachers, provides new discretion to school principals and teachers to address the needs of those schools on a school-wide basis.<sup>38</sup>

The Goals 2000 Act reflects a determination that schools and local and state agencies must have greater flexibility in the administration of their federally assisted education programs.<sup>39</sup> As President Clinton said in signing the Goals 2000 Act, "We're going to . . . cut the red tape to districts [that] want to try new and different and innovative things."<sup>40</sup> The IASA does this by providing greater flexibility and coordination. For example, § 14401 of the amended ESEA provides authority to the Secretary of Education to waive, subject to certain limitations, statutory or regulatory requirements that inhibit quality instruction or improve academic performance.<sup>41</sup>

The Goals 2000 Act and various provisions of the IASA invite principals closest to the students to develop improved and effective innovative learning opportunities. For example, the IASA provides demonstration money to develop and implement charter schools and encourages greater school site decision-making in developing and implementing Title I projects and staff development.

The Goals 2000 Act encourages educators to identify world-class, voluntary national academic content and student performance standards.<sup>42</sup> Federal assistance for professional development under Title II of the IASA is designed to enable teachers in a state to teach to those challenging academic standards.

36. Goals 2000 Act § 301(1).

37. ESEA § 1061(b)(1), (3).

38. ESEA § 1111(b). This emphasis on meeting high standards also characterizes assistance for education, bilingual education, and emergency immigrant education. See *id.*, titles VII, IX.

39. See Goals 2000 Act § 311.

40. Remarks on Signing the Goals 2000: Educate America Act in San Diego, 30 WEEKLY COMP. PRES. DOC. 656, 657 (April 4, 1994).

41. ESEA § 14401(a).

42. *Id.*, titles X-C, 1-A.

43. Goals 2000 Act, title II.

the state has voluntarily adopted through the state's own processes. In adopting these standards, the state will have available, for certain subjects, the national content and performance standards identified under Title II of the Goals 2000 Act, to use as a resource or starting point. In these circumstances, the professional development provisions of the amended ESEA will help bring world class standards into daily classroom practice to the extent that they are reflected in the standards that the state actually adopts.<sup>44</sup>

The Goals 2000 Act promotes greater family involvement in learning, an objective included in the National Education Goals. The IASA, through its emphasis on such innovations as school-parent compacts, reinforces this initiative.<sup>45</sup> In addition, our Department of Education has built a partnership with more than 200 parent, religious, business and education organizations to help promote and support better family-school communication and greater family involvement in learning. A Department study, entitled *Strong Families, Strong Schools*, shows that parental involvement can make a positive difference in raising student educational achievement.<sup>46</sup>

#### V. Title I of the ESEA

Title I of the ESEA provides for educational assistance to educationally deprived children in areas with high concentrations of children in low-income families. It is the nation's most substantial elementary and secondary education program at the federal level.

Senator Pell, during the debate on the conference report, described the impact of the IASA amendments on Title I of the ESEA.

The Title I program, . . . is the *backbone* of this bill. We have refined that program, better targeted it to children most in need, and linked it to the achievement of challenging academic and student performance stan-

44. ESEA, title II-A: see Marshall Smith et al., *National Curriculum Standards Are They Desirable and Feasible?*, in *THE GOVERNANCE OF CURRICULUM YEARBOOK OF THE ASSOCIATION FOR SUPERVISION AND CURRICULUM DEVELOPMENT* 20 (Richard Elmore & Susan Fuhrman eds., 1994.)

45. ESEA § 1112; see text *infra* following note 79, for a discussion of school-parent compacts.

46. U.S. DEPT OF EDUC., *STRONG FAMILIES, STRONG SCHOOLS, BUILDING COMMUNITY PARTNERSHIPS FOR LEARNING* iii (1994) ("Three factors over which parents exercise authority—student absenteeism, variety of reading materials in the home, and excessive television watching—explain nearly 90 percent of the difference in eighth-grade mathematics test scores across 37 states and the District of Columbia on the National Assessment of Educational Progress (NAEP). Thus, controllable home factors account for almost all the differences in average student achievement across states (Barton & Coley 1992)."). To provide direct information to parents and educators, in order to build stronger partnerships for learning, the Department has installed a toll-free number and a home page on the Internet and sponsors monthly satellite town meetings.

dards. This is an achievement of considerable import and significance.<sup>47</sup>

Senator Pell's observation is, as always, on target. As Congress has repeatedly recognized over the past thirty years, if we are to meet our educational goals and achieve our national aspirations for economic growth and for equity and excellence in our society, improved education for the population that Title I serves is absolutely essential. To this end, we have worked hard to strengthen Title I through the revisions made by the IASA and through our efforts to implement its provisions.

(1) *Helping communities and states to raise standards.* The alignment between Title I and state content and performance standards is made clear in opening sections of the Title I statute. These provisions are designed to "guard against a lower set of expectations being applied to disadvantaged children."<sup>48</sup> The new state plan provisions of Title I incorporate these ideas. The major changes were emphasized by the Department in its original proposal: "These changes tie Title I directly to state and local reform efforts, ensure that the performance expected of children in Title I schools is the same as expected of all children."<sup>49</sup>

The state plan is the document that a state now files with the Secretary in order to participate in the Title I program.<sup>50</sup> In the Title I state plan, the state demonstrates that it "has developed or adopted challenging content standards and challenging student performance standards that will be used by the state and its local educational agencies, and its schools to carry out [Title I]."<sup>51</sup> A state is not required to submit the standards to the Secretary.<sup>52</sup> If a state has its own content or performance standards developed under Title III of the 1995 Act, together with an aligned set of assessments, it uses those standards and assessments (as modified).<sup>53</sup> If not, the state includes in its plan a strategy and schedule for developing state content and state student performance standards for elementary and secondary children served under Title I in subjects determined by the state. However, the subjects must include at least mathematics and reading or language arts by the end of a specified period. These stan-

47. 105 CONG. REC. S14,147 (daily ed. Oct. 5, 1994) (emphasis added).

48. 140 CONG. REC. S14,150 (daily ed. Oct. 5, 1994) (remarks of Sen. Kassebaum). For FY 1995, 6.6 billion dollars were appropriated for Title I grants to local educational agencies.

49. PROSPECTUS, *supra* note 21, at I-8.

50. ESEA § 1111(a).

51. *Id.* § 1111(b)(1).

52. *Id.*

53. *Id.* § 1111(b)(1)(B) (modification may be necessary to comport with § 1111).

it should be emphasized, must "include the same knowledge, skills and levels of performance *expected of all children*."<sup>54</sup>

In addition, each state must use a set of high quality assessments to measure the progress of children served relative to the state's standards. They must include assessments in at least mathematics and reading or language arts.<sup>55</sup> To ensure that Title I children are not held to a lower set of expectations, the statute provides that these assessments are to be the *same* assessments used to measure the performance of all children and are to be aligned with the state's challenging content and student performance standards.<sup>56</sup>

Provision is made for adjusting the time frame within which these steps must be taken. However, the thrust of Title I in making the connection between the Title I program and the development of state standards and assessments is manifest. With it comes a degree of burden reduction. As stated in the prospectus accompanying the Department's proposal: "To free states and locals from the burden of providing data for a national assessment system, the U.S. Department of Education will gather national evaluation data separately, using a sample. This will dramatically reduce the amount of testing taking place in the average Title I school."<sup>57</sup>

(2) *Better targeting of funds.* The educational research upon which the targeting provisions in Title I are based tells us that obstacles to learning are concentrated in the highest poverty schools.<sup>58</sup> As the Department found, "Over half the students in schools with the highest concentration of poverty are low achievers, compared with only 8 percent of students in schools with the least poverty."<sup>59</sup> Because it found that Title I funds were spread too thinly to meet the needs of the highest poverty schools, the administration proposed a formula for distribution of Title I funds that would more effectively target the funds on those schools.<sup>60</sup>

The IASA only modestly moves in that direction. Nevertheless, the formula that is adopted in the IASA achieves a somewhat higher degree of targeting

54. *Id.* § 1111(b)(1)(C) (emphasis added).

55. *Id.* § 1111(b)(3).

56. *Id.* § 1111(b)(2)(A), (B).

57. PROSPECTUS, *supra* note 21, at 1-8; see also SMITH, *supra* note 17, at 15 ("The reauthorized ESEA eliminates special required testing of only Title I students for placement and accountability purposes.").

58. PROSPECTUS, *supra* note 21, at 16.

59. *Id.*

60. See ESEA §§ 1122-24, as proposed in H.R. 3130, 103rd Cong., 1st Sess. (1993); PROSPECTUS, *supra* note 21, at 16 (one third of the children in the highest poverty schools who score at the bottom third in reading tests do not receive Chapter 1 services); *id.* at 1-13 (proposed formula would, at 1995 proposed appropriation levels, move approximately \$500 million from lower-poverty to higher-poverty counties).

than that provided by the Title I statute as it existed prior to the enactment of the IASA, if Congress enacts higher levels of appropriations for the amended Title I.<sup>61</sup> With respect to allocation of funds among states, the IASA retains the Chapter I formula for allocating funds for the allocations under the fiscal year 1995 appropriation. Any change in focus will depend on how new funds are appropriated beginning with fiscal year 1996. If these additional funds are directed through the new formula for "targeted grants" under section 1125 of the amended ESEA, then poor urban and rural school districts will tend to receive above-average increases.<sup>62</sup> If, on the other hand, funds are appropriated for the education finance incentive program under section 1125A of the act, the degree of targeting may be eroded.

Substantial improvement in targeting on high poverty schools is achieved by other provisions in the new Title I directed at the manner in which an LEA distributes the funds it receives among schools or school attendance areas, rather than the formula for state distribution. For example, an LEA is now required to serve all schools with poverty rates of 75 per cent or more, including middle and high schools, before serving schools with poverty rates of less than 75 percent. The intent of this provision was to direct Title I services to more high-poverty middle and high schools instead of lower poverty elementary schools.<sup>63</sup>

The amended ESEA calls upon LEAs to distribute Title I funds to school on the basis of poverty, a change designed to "eliminate the penalty for successful schools caused by allocating funds on the basis of low achievement."<sup>64</sup> In addition, subject to certain exceptions, the "per pupil amount of funds allocated to each school attendance area or school . . . [must] be at least 125 per cent of the per pupil amount of funds a local educational agency received for that year under the poverty criteria described by the local educational agency in [its LEA plan]."<sup>65</sup> This provision, coupled with the requirement in section 1113(c) that the LEA must allocate funds and serve in rank order, has the effect of concentrating funds, allocated within an LEA, on the highest poverty schools.<sup>66</sup>

(3) *Strengthening the entire school day and extending learning time when needed.* Concerns have been raised about the burden on local school persons

61. Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, § 1005, 79 Stat. 27, amended by 20 U.S.C. § 7711 (1989). The new formula is found in ESEA §§ 1121-27. See 140 CONG. REC. 514 (daily ed. Oct. 5, 1994) (remarks of Sen. Kassebaum) (targets Title I funds "more effectively").

62. See H.R. REP. NO. 761, 103rd CONG., 2nd Sess. 613-37, (1994); ESEA §§ 1122(a)(2), 1125.

63. See ESEA § 1113(a)(3); PROSPECTUS, *supra* note 21, at 1-13.

64. See PROSPECTUS, *supra* note 21, at 1-13; ESEA § 1113(a)(5).

65. ESEA § 1113(c)(2) (subject to stated exceptions).

66. See PROSPECTUS, *supra* note 21, at 1-13.

of numerous federal and state programs—each with its own rules and regulations. Under the new school-wide approach to Title I, a school that carries out a schoolwide program can use its Title I funds, and funds from most other Federal education programs, as supplementary funds, to serve the entire school rather than use them exclusively for individual children.

Expansion of the schoolwide program concept to a large number of new schools is an important innovation in the administration of Title I. In its earliest phase, Title I required an LEA with Title I funds to select schools in school attendance areas with high concentrations of children from low income families and to identify and serve, in those schools, particular educationally deprived children identified as having the greatest need. This arrangement put a premium on accounting procedures that tracked the delivery of services to particular children for a small part of the day; it did not take into account the need to strengthen the entire school day for these children and to strengthen the school as a whole. Subsequently, Congress amended the law to permit Title I funds to serve the entire school but only if the school had a poverty level of more than 75 percent.<sup>67</sup>

The IASA greatly enhances this concept. It now provides that a school is eligible to carry out a schoolwide program with Title I funds if, in school year 1995-96, it serves an eligible school attendance area where not less than 60 percent of the children are from low-income families.<sup>68</sup> In school year 1996-97 and thereafter the percentage becomes 50.<sup>69</sup>

These changes, recommended by the administration in its bill, will substantially broaden the flexibility schools possess in using Title I and other program funds at the school level to improve student performance throughout the school day and year. The changes will give schools in high poverty areas a greater opportunity to improve teaching and learning in the school *as a whole* and permit many more children in the school to meet the state or local higher performance standards.<sup>70</sup> It is anticipated that 20,000 Title I schools will now have this opportunity, an estimated increase of 12,000 schools when the law is fully implemented.<sup>71</sup> These changes will also have a substantial impact on

67. Elementary and Secondary Education Act of 1965 § 1015(a), *as amended by* 20 U.S.C. 2725(a) (1988).

68. ESEA § 1114(a)(1)(A).

69. *Id.* § 1114(a)(1)(B).

70. *See id.* § 1114(b) (components of a schoolwide program).

71. *See PROSPECTUS, supra* note 21, at 1-9. Overall about 50,000 schools participate in Title I. *Id.* at 1-6. In addition, the new provisions permit funds from most other federal education programs, as well as Title I, to be included in the schoolwide program if the intent and purposes of these funding sources are met. *Id.* at 1-9.

the way that teachers address the needs of educationally disadvantaged children. The Department relied upon the results of educational research in proposing these changes. Its "prospectus" on the IASA proposal observed:

Research shows that effective schools are characterized by an ethos of learning, positive expectations for all children, and effective school leadership. Research documents further that when the target of change is the entire school, not just the poorest performing children, schools serving even the most disadvantaged can succeed. The flexibility and school-level accountability accorded to the Title I schoolwide programs can help create a climate that encourages *whole school transformation*, particularly in schools that serve concentrations of poor children.<sup>72</sup>

Accordingly, § 1114 of the ESEA makes the decision to adopt schoolwide program status start with the school itself and calls upon the school to establish its own concept of how that program is to work. An eligible school that wants to operate a schoolwide program must first develop (or amend) "a comprehensive plan reforming the total instructional program in the school. . . ."<sup>73</sup> The law describes the components of a schoolwide program and provides guidance as to the type of services to meet the needs of target populations that the school may provide. With these steps taken, substantial flexibility is afforded. A school participating in a schoolwide program is relieved of the requirement of identifying particular children under Title I as eligible to participate in the program or of providing supplemental services to these children.<sup>74</sup>

Title I schools that are not eligible or do not opt for schoolwide program status are referred to as "targeted assistance schools." For these schools, new law contemplates "effective instructional strategies" that "give priority consideration to providing extended learning time" and "minimize removal of children from the regular classroom during regular school hours. . . ."<sup>75</sup> President Clinton stated in signing the IASA: "[T]his bill . . . encourages schools to take kids that are from underprivileged backgrounds and instead separating them out from other students, bring them into the classrooms, in smaller classes, work with them, have kids help kids to get everybody into mainstream, and everybody develop to the fullest of their God-given cap

72. Prospectus, *supra* note 21, at 11-12 (emphasis added).

73. ESEA § 1114(b)(2). The plan must, among other things, incorporate schoolwide reform strategies that provide "opportunities for all children to meet the State's proficient and advanced levels of performance. . . ." *Id.* § 1114(b)(1)(B).

74. *Id.* § 1114(a)(3)(A). The school must use federal funds so as to supplement non-federal resources available to the school. *Id.* § 1114(a)(3)(B).

75. *Id.* § 1115(c)(1)(D).

ies."<sup>76</sup> The law describes the components of a targeted assistance program and emphasized school level decision-making. A primary consideration is that the program resources be used to "help participating children meet [the] State student performance standards expected for all children."<sup>77</sup> Strong emphasis is given in this respect to coordination of resources, ongoing review of the progress of participating children, and professional development by the school.<sup>78</sup> The ESEA statute also permits use, under certain limited circumstances, of program funds to provide comprehensive health, nutrition and other social services not otherwise available to eligible children.<sup>79</sup>

(4) *Promoting parental involvement.* As recommended in the administration bill, the IASA includes better mechanisms to encourage greater parental involvement in learning. An LEA or school assisted under Title I must develop (jointly with parents) a "written parent involvement policy."<sup>80</sup> Parent comments on the LEA and schoolwide program plan must be obtained. A school served under Title I must also develop jointly with parents "a school-parent compact." The compact would outline how parents, staff, and students "will share the responsibility for improved student achievement and the means by which the school and parents will build and develop a partnership to help children achieve the State's high standards."<sup>81</sup> Finally, the amended ESEA provides for support for developing skills of teachers, parents and principals to work together to help their children learn more.<sup>82</sup>

(5) *Accountability and rewards for better student performance.* The new ESEA provides for a system of performance-based accountability coupled with high quality state assessments and rewards for high performance.<sup>83</sup> Under this system a state designates as a "distinguished school" a school served under Title I-A if the school, for three consecutive years, exceeds the state's definition of adequate progress. Schools so designated serve as models and may receive additional funds under the ESEA to further their educational programs, provide incentives, or

76. 30 WEEKLY COMP. PRES. DOC. 2084, 2087.

77. ESEA § 1115(c)(1)(A).

78. *Id.* § 1115(c)(2), (c)(3).

79. *Id.* § 1115(e)(2).

80. *Id.* § 1118(a)(2), (b)(1).

81. *Id.* § 1118(d). The statute provides that a compact describe the school's responsibility to provide high quality curriculum and instruction and the "ways in which each parent will be responsible for supporting their children's learning, such as monitoring attendance, homework completion, and television watching; volunteering in their children's classroom; and participating, as appropriate, in decisions relating to the education of their children and positive use of extracurricular time." *Id.* § 1118(d)(1).

82. *Id.* § 1118(e).

83. *See id.* §§ 1116-1117.

reward individuals or groups in the school for exemplary performance.<sup>84</sup>

In order to ensure accountability, as well as recognize high performance, the Act also calls upon each local educational agency annually to review progress of each school served under Title I-A in accordance with the assessments. It identifies schools needing improvement. These schools are expected to develop or revise a school plan and provide better and more effective professional development programs to teach the more challenging skills needed by today's students. The LEA provides technical or other assistance and takes corrective action if the school fails to make adequate progress. If the LEA fails to do this, the state educational agency takes corrective action. Provisions are also made for state educational review of local educational agency programs.

(6) *Even Start*. The Even Start program is expanded through authority to serve teen-age parents and through stronger provisions for community-school partnerships.<sup>85</sup> Representative Goodling commented on this provision at the time of the House debate on H.R. 6:

[W]e have expanded the program to include a high-risk group, teenage parents. Instead of waiting until young parents drop out of school, placing them at risk of unemployment and dependency on welfare, they are now eligible participants in Even Start. This will provide them with the support they need to stay in school and to become a true partner in their child's education. . . .<sup>86</sup>

The focus in Even Start is on *family literacy*. As stated in the material accompanying the Department's proposal: "Family literacy programs recognize the intergenerational effect of the parents' education and the role of the parent in the educational development of the child. The improvement of family literacy is an emerging and promising practice in education intended to break the cycle of poverty and illiteracy. . . ."<sup>87</sup> The purpose section of the revised pre-Act statute expresses the intent of the program to assist both children and adults in low-income families to achieve to challenging state content and performance standards.<sup>88</sup>

84. *Id.* § 1117(c)(2).

85. *Id.* § 1116(a)-(d).

86. *Id.* §§ 1201-1210.

87. 140 *CONG. REC. H805* (daily ed. Feb. 24, 1994) (Rep. Goodling was ranking minority member of the House Committee on Education and Labor in the 103rd Congress and is now chairman of the Committee on Economic and Educational Opportunities in the 104th Congress.)

88. *PROSPECTUS, supra* note 21, at 1-15.

89. ESEA § 1201(3).

## VI. Better and Ongoing Professional Development for Teachers—Title II of the ESEA

"[S]ustained and intensive high-quality professional development" is absolutely essential to help educators deliver instruction at the challenging level envisaged in the Goals 2000 Act and is a prerequisite to achievement of all the National Education Goals.<sup>90</sup> Access to quality professional development for all teachers is explicitly stated as a national education goal and is particularly vital to helping students achieve at much higher levels in the core subjects.<sup>91</sup> Title II of the amended ESEA authorizes the Dwight D. Eisenhower Professional Development Program to respond to this clear and present educational need.<sup>92</sup>

Title II authorizes the appropriation of \$800,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years, to carry out the program.<sup>93</sup> Federal activities include an Eisenhower National Clearinghouse for Mathematics and Science Education and a National Teacher Training Project.<sup>94</sup> Title II-B authorizes the Secretary to make grants to state educational agencies "for the improvement of teaching and learning through sustained and intensive high-quality professional development activities in the core academic subjects at the State and local levels."<sup>95</sup> Provision is made for allocation of funds to states and for within-state allocations.<sup>96</sup> State applications must include a professional development plan to be developed "in conjunction with the State agency for higher education, community based and other nonprofit organizations of demonstrated effectiveness, institutions of higher education or schools of education," as well as teachers, administrators and pupil services personnel.<sup>97</sup>

The law provides to a participating state the option to engage in a host of state level professional development activities including "reviewing and reforming State requirements for teacher and administrator licensure. . . to align

90. *Id.* § 2001(2); see generally, NATIONAL GOVERNORS' ASSOCIATION, TRANSFORMING PROFESSIONAL DEVELOPMENT FOR TEACHERS, A GUIDE FOR STATE POLICYMAKERS (1993).

91. Goals 2000 Act § 102(4). All too often teachers are asked to meet pressing educational needs, such as incorporating computer skills into the curriculum or bolstering mathematics achievement, without the time or preparation to deliver the new instruction effectively.

92. ESEA §§ 2001-2402.

93. *Id.* § 2003(a).

94. *Id.* §§ 2102-2103.

95. *Id.* § 2201, Section 102(3) of the Goals 2000 Act includes as core subjects: English, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

96. *Id.* §§ 2202-2203.

97. *Id.* § 2205(b)(2).

such requirements with the State's challenging State content standards. A local educational agency or school that receives Title II-B funds may use them for such activities as "professional development . . . to support (or be consistent with) challenging State content standards and challenging State performance standards";<sup>98</sup> "support and time, which in the case of teachers may include release time with pay," to enable them "to participate in professional development in the core academic subjects that are offered through professional associations, universities, community based organizations, and other providers such as . . . science centers and museums,"<sup>99</sup> and "establishment and maintenance of local professional networks. . . ."<sup>100</sup> Title II authorizes the state for higher education to provide financial assistance to institutions of education, working with LEAs, for professional development activities.

What is different about this new effort to ensure teachers' skills? It insists upon "sustained and intensive" professional development—development that is "of sufficient intensity and duration to have a positive and lasting impact on the student's performance in the classroom."<sup>101</sup> This is to be contrasted with the traditional practice of providing professional development on a one or two hour basis, with the program offered at the end of a long week and unconnected to any overall school improvement strategy. Second, it is tied to challenging state content and student performance standards, within the framework of the Goals 2000 Act. Third, it encompasses *all of the core areas* and is not confined only to mathematics and science as was the case under the ESEA, as in effect prior to the enactment of the IASA. Finally, implementation of this new authority is subject to the enactment of state appropriations above a level established in the Title II statute.<sup>102</sup> Under these circumstances, over the long term, I believe that Title II will have a more positive impact on educational improvement than preceding legislation. It will also encourage and assist teachers to deliver remedial and other services.

98. *Id.* § 2207(1).

99. *Id.* § 2210(b)(3)(A).

100. *Id.* § 2210(b)(3)(B).

101. *Id.* § 2210(b)(3)(E).

102. *Id.* § 2211.

103. *Id.* § 2208(d)(1)(E).

104. *Id.* § 2208(c)(1). Under title II, the first \$250 million must be used for mathematics. *Id.* § 2206. For FY 1995, \$320 million was appropriated for state grants. Department of Labor, Human Services, and Education, and Related Agencies Appropriation Act, Pub. L. No. 103-253, 2562; H.R. Rep. No. 733, 103rd Cong., 2d Sess. 91 (1994). The fiscal year 1995 rescission Act, Pub. L. No. 104-19, rescinds \$69 million of this amount, leaving a fiscal year 1995 appropriation of \$251 million.

children, including the disadvantaged, in new and more effective ways that help all children learn to higher standards.

### VII. Making Schools Safer and Drug-Free

In signing the IASA at Framingham High School, President Clinton voiced a concern that all Americans share profoundly. "If we can't make these schools in this country safe, if children are not free of fear when they come to school, they are not going to learn very well."<sup>105</sup> The IASA includes, as Title IV, of the amended ESEA, the Safe and Drug-Free Schools and Communities Act of 1994 (SDFSCA), carrying forward and improving similar legislation in the prior ESEA.<sup>106</sup> The purpose of the new title is "to support programs to meet [one of the National Education Goals] by preventing violence in and around schools and by strengthening programs that prevent the illegal use of alcohol, tobacco, and drugs...."<sup>107</sup> Title IV authorizes the appropriation of \$630,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years, for grants to states.<sup>108</sup> The preponderance of the funds made available to the state must be distributed to local educational agencies, to be used for carrying out "comprehensive drug and violence prevention program[s]."<sup>109</sup> A major thrust of the Act is the inclusion of *violence prevention* as a key program element.

The new title authorizes a broad range of prevention activities for all students including "age-appropriate, developmentally based drug prevention and education programs" and "age-appropriate, developmentally based violence prevention and education programs."<sup>110</sup> Violence prevention programs emphasizing a student's sense of individual responsibility may include "the implementation of strategies, such as conflict resolution and peer mediation, student outreach efforts against violence, anti-crime youth councils... and the use of mentoring programs."<sup>111</sup> Supporting "safe zones of passage" and the "promotion of before-and-after school recreational, instructional, cultural and artistic programs in supervised community settings" are also listed.<sup>112</sup> In addition the title provides

105. 30 WEEKLY COMP. PRES. DOC. 2084, 2088.

106. Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, title V, 79 Stat. 27, amended by 20 U.S.C. §§ 3172-3232 (1986).

107. ESEA § 4003.

108. *Id.* § 4004.

109. *Id.* § 4113, 4116(a).

110. *Id.* § 4116(b)(1), (3).

111. *Id.* § 4116(b)(4)(C).

112. *Id.* § 4116(b)(5), (8).

for a set of national programs, including grants to institutions of higher education and hate crime prevention.<sup>113</sup> Senator Dodd put the matter this way in debate on the conference report: "This legislation takes us one step further expanding the Drug-Free Schools Program so that it will include a new emphasis on safety. More than \$500 million of Federal funds will now be available to schools to prevent violence."<sup>114</sup>

In his veto of the fiscal year 1995 rescission bill, President Clinton focused on the need for adequate funds to carry out this legislation. His veto has resulted in the restoration of substantial fiscal year 1995 funds in order to support the achievement of the critically important objectives contained in Title IV of the ESEA.

All of these activities will complement the broader efforts being carried out under the recently enacted crime bill, the Violent Crime and Law Enforcement Act of 1994.<sup>115</sup> The IASA also reinstates the Gun Free Schools Act of 1994, first enacted in Pub. L. No. 103-227; the IASA includes this legislation as section 14601 of the amended ESEA.<sup>116</sup>

### VIII. Designing Schools to Better Match Parent and Teacher Goals: Public Charter Schools

Title X-C of the ESEA provides for a program to assist public charter schools. The purpose of this part of the program is "to increase national understanding of the charter schools model."<sup>117</sup> This purpose is to be achieved by "the design and initial implementation" of these schools, as well as evaluation of their effects.<sup>118</sup> The Secretary is authorized to award grants to SEAs to

113. *Id.* §§ 4121-4123. Under section 4122, the Secretary may provide assistance to institutions of higher education for drug and violence prevention programs, including support for "model programs and strategies to promote the safety of students attending [such institutions]."

114. 140 *Cong. Rec.* S14,182-83 (daily ed. Oct. 5, 1994).

115. H.R. Doc. No. 104-83, reprinted in 141 *Cong. Rec.* H5,682-83 (daily ed. June 7, 1995) bill "would reduce or eliminate anti-violence and drug prevention programs serving weary students"; see Emergency Supplemental Appropriation for Additional Disaster Assistance—See An Act, Pub. L. No. 104-19, 109 Stat. 217 (1995) (rescinding from Title IV \$15,981,000 for fiscal year 1995 rather than the \$236 million that would have been rescinded under the rescission legislation that was vetoed); H.R. Doc. No. 104-83, 104th Cong., 1st Sess. 25 (1995). The legislation resulting from this action leaves \$466 million for the program for FY 1995.

116. Pub. L. No. 103-322, 108 Stat. 1796 (1994).

117. ESEA § 14601. Subject to stated exceptions, section 14601(b) provides that "each State shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than one year a student who is determined to have brought a weapon to a school under the jurisdiction of local educational agencies in that State. . . ."

118. *Id.* § 10301(b).

119. *Id.* § 10301(b)(1), (2).

them to conduct charter school grant programs. In certain cases, assistance is provided to other eligible applicants. Where a state is participating, eligible applicants apply to the state. The Secretary is also authorized to waive statutory or regulatory requirements over which the Secretary exercises administrative authority if the waiver will promote the purposes of the program.<sup>120</sup>

Funds made available by the Secretary or a state to an eligible applicant are to be used for program planning following the award of a grant and design of an educational program and initial implementation, including informing the community, acquiring equipment, materials, and supplies, and acquiring or developing curriculum materials. Section 10306 of the Act defines a "charter school" as a public school that, among other things, "in accordance with an enabling State statute, is exempted from significant State or local rules that inhibit the flexible operation and management of public schools."<sup>121</sup> A charter school must be nonsectarian in its programs, admissions policies and other operations and must comply with federal civil rights laws.<sup>122</sup>

The Congressional findings accompanying this new public charter schools authority reflect an expectation that this authority can be used to enhance the education of students generally. Thus, charter schools are seen as "a mechanism for testing a variety of educational approaches" and as helping to reduce school size, itself a factor that "can have a significant effect on student achievement."<sup>123</sup> Accordingly, through its emphasis on the development and operation of smaller schools tailored to local needs, on school based flexibility, and on the partnership between parents and teachers, the public charter schools authority may serve to advance not only the education of students attending charter schools but also the generation of effective school reform ideas to help all students.

### IX. Making Available Better Technical Assistance—Title XIII of the ESEA

High quality technical assistance is a key ingredient of successful education improvement efforts. The IASA adds a new Title XIII to the ESEA designed to create a comprehensive "national technical assistance and dissemination system."<sup>124</sup> Part A of the title authorizes the Secretary, through awards to public

120. *Id.* §§ 10302, 13303, 10304(c).

121. *Id.* § 10306(1).

122. *Id.* § 10306(1)(E) and (g).

123. *Id.* § 10301(a)(3), (5). The President's fiscal year 1996 budget requests \$20 million for this authority for fiscal year 1996, an increase of \$14 million over the fiscal year 1995 level. U.S. DEPT OF EDUC., THE FISCAL YEAR 1996 BUDGET 23 (1995) [hereinafter FY 1996 BUDGET].

124. ESEA § 13002.

or private entities, to establish "a networked system of 15 comprehensive regional assistance centers."<sup>125</sup> These 15 comprehensive centers will replace the multitude (49) of current centers that have narrow categorical focuses. The new centers are to provide comprehensive training and technical assistance relating to the administration and more effective and efficient implementation of the ESEA. The centers may serve LEAs, states, tribes, schools and other recipients. The title includes strong accountability provisions and a set of specific standards for centers to follow in order to promote high quality instruction.<sup>126</sup> Title XIII also extends the National Diffusion Network, better integrates it with reform efforts, and provides for a network of Regional Mathematics and Science Consortia.<sup>127</sup>

### X. Other Major Programs

The IASA adds to the ESEA a number of other new authorizations designed to improve the basics of education needed by our students for the 21st century and support achievement of the National Education Goals.

*A. Technology for Education.* In these times, our students need to learn about and use technology and computers in the classroom. Title III-A creates a program to engage public-private partnerships to design and "support a comprehensive system for the acquisition and use by elementary and secondary schools" of technology and technology enhanced curricula, instructional materials, and administrative support services.<sup>128</sup> This title, which Senator Pell described as "truly historic," authorizes support for both national and state level activities. The new title also provides (in subpart 4) for assistance to enable recipients to "develop, produce, and distribute new products, state-of-the-art technology enhanced instructional resources and programming. . . ."<sup>129</sup>

*B. Magnet schools; WEEA.* Title V of the amended ESEA, authorizes assistance to local educational agencies to better help magnet schools that are part of an approved desegregation plan and (2) "designed to bring

125. *Id.* § 13101(a)(1). This new system is to be phased in on an orderly basis. *Id.* § 13101.

126. *Id.* §§ 13101-13102. The fiscal year 1995 rescissions legislation rescinded \$14,900 of the fiscal year 1995 appropriation leaving about \$30 million for fiscal year 1995. See 109 Stat. 217. The President requested \$55 million for fiscal year 1996 in the budget for that year. FY 1996 BUDGET, at 15.

127. ESEA §§ 13201-13301. The IASA also provides for technology-based technical assistance. § 13401.

128. *Id.* § 3112.

129. See 140 CONG. REC. S14,147 (daily ed. Oct. 5, 1994); ESEA §§ 3121-3137. The President is directed to develop a national long-range technology plan. ESEA § 3121.

130. ESEA § 3151.

from different social, economic, ethnic and racial backgrounds together. . . .” Major improvements strengthen the focus on reducing minority group isolation and emphasize services to a wide range of students.<sup>131</sup> The congressional statement of purpose for the program recognizes its significance in assisting LEAs in providing all students the opportunity to meet challenging state standards.<sup>132</sup> Title V-B of the ESEA contains a strengthened Women's Educational Equity Act<sup>133</sup> with a \$5 million FY 1995 authorization. These Title V authorizations respond to the objective of Goal two of the National Education Goals.

*C. Innovative education strategies.* A new Title VI of the ESEA assists state and local agencies to carry out innovative education program strategies. Title VI is based upon former Chapter 2 of Title I of the ESEA and carries forward a number of its provisions.<sup>134</sup> The new Title VI provides an opportunity to marshal program funds to support various reform efforts. Broad authority is provided to state and local educational agencies to select the purposes for which funds may be used. A \$370 million authorization is provided for fiscal year 1995.<sup>135</sup> At the local level, funds may be used for “innovative assistance programs” including technology related to the implementation of school-based reforms; programs for the acquisition and use of instructional materials which are “tied to high academic standards”; and “promising education reform projects.”<sup>136</sup>

*D. Impact Aid.* Impact aid has been a staple among federal education programs since the 1950s and was badly in need of reform. It provides assistance to school districts whose education responsibilities are increased (“impacted”) by the presence of Federal facilities such as military bases or Indian reservations. The program has been substantially restructured and, for the first time, incorporated into the ESEA as Title VIII.<sup>137</sup>

131. *Id.* § 5103. The President requested approximately \$112 million for this authority for fiscal year 1996, FY 1996 BUDGET, *supra* note 123, at 19.

132. ESEA § 5102(2).

133. *Id.* §§ 5201-5208. For fiscal year 1996, the President requested \$4 million for this authority, FY 1996 BUDGET, *supra* note 123, at 25.

134. ESEA §§ 6001-6403. Under section 6301, local innovative assistance programs include activities such as reform-related technology, the acquisition and use of instructional and educational materials which are part of an education reform program, and effective school programs. The objective of the administration in its IASA proposal was to direct this money to professional development in order to concentrate enough dollars on that purpose to make a significant difference.

135. *Id.* § 6002.

136. *Id.* § 6301; see *also* *id.* § 6001(b).

137. ESEA Title VIII contains the authorization for the Impact Aid program previously found in Pub. L. Nos. 81-874 and 81-815.

E. *Programs of national significance.* The amended ESEA contains in Title X (programs of national significance) a number of key authorizations proposed in the administration bill that are designed to foster systemic reform in education. In addition to the charter schools authorization (discussed above), those programs include (a) a revised and retargeted Fund for the Improvement of Education and authority for a Partnerships in Character Education Pilot Project; (b) a reauthorized program of educational assistance for gifted and talented children, the Jacob K. Javits Gifted and Talented Students Education Act of 1994;<sup>138</sup> (c) better defined support for arts in education and new cultural partnerships for at-risk children and youth;<sup>139</sup> (d) a reauthorized inexpensive book distribution program;<sup>140</sup> and a number of other discretionary programs.

In the reauthorized Javits Gifted and Talented Program, priority is given to the identification and serving of gifted and talented students who may not be identified and served through traditional assessment methods and programs. Applicants are asked to describe in their applications how the proposed gifted and talented services, materials, and methods can be adapted, if appropriate, for use by all students.<sup>141</sup> A purpose of the new Javits Gifted and Talented Education Act is "to encourage the development of rich and challenging curricula for all students through the appropriate application and adaptation of m

138. ESEA §§ 10101-10107. The President requested approximately \$37 million for the FIE as for fiscal year 1996. FY 1996 Budget 82. Section 10103 provides for the pilot project on character education. It authorizes the Secretary to make up to a total of 10 grants annually to partnerships of state educational agencies and local educational agencies for the design and implementation of character education programs that incorporate the elements of character listed in the statute as well as other elements identified by applicants.

139. ESEA §§ 10201-10207. Among other things, the amended ESEA encourages the use of gifted and talented teaching techniques and curriculum to strengthen the entire school day. *Id.* § 10204(b). The fiscal year 1995 rescission legislation rescinds \$4.6 million of the fiscal year 1995 appropriation, \$4.9 million for this program. *See* 109 Stat. at 218. The President requested \$29.5 million for fiscal year 1996.

140. ESEA §§ 10401-10415. The act, in Title X-D, provides for a broad range of federal programs designed to support arts education, including support for model projects and programs to integrate arts education into the regular elementary and secondary school curriculum. *Id.* § 10401(d)(9). The fiscal year 1995 appropriation, after the rescission action, is \$10.5 million. The President has requested \$10 million for fiscal year 1996. *See* 109 Stat. 194; FY 1996 Budget, at 25. The bulk of these funds are used for programs carried out by the John F. Kennedy Center for the Performing Arts and the Very Special Arts program. The President's request contemplates \$1 million to cover activities under the expanded reauthorization in the IASA, such as research, development of standards and assessments, and professional development.

141. ESEA § 10501.

142. A new grant program designed to help LEAs begin to address the need to repair, rebuild school facilities in LEAs through grants for school construction assistance constitutes Title X of the amended ESEA. The fiscal year 1995 rescission legislation rescinds the fiscal year 1995 appropriation of \$35 million for this program. *See* 109 Stat. at 217.

143. ESEA §§ 10205, 10204(a)(2).

als and instructional methods developed under [that legislation]," as well as to provide financial assistance to meet the special educational needs of gifted and talented students.<sup>144</sup>

### XI. Programs Directed at Specific Target Populations

It is clear that the National Education Goals and our aspirations for higher academic achievement throughout the nation cannot be achieved unless all children are reached by the education reform to which the Goals 2000 Act and the IASA give new momentum. Accordingly, the IASA's efforts to address the needs of specific target populations are of special significance in our efforts to improve academic achievement broadly across America. Title IX of the ESEA contains the Indian Education Act designed to help Native American students attain the same high standards expected of all students.<sup>145</sup>

Title VII provides for strengthened Bilingual Education programs, to serve children and youth of limited English proficiency and enable them to learn English and other major subjects to high content standards, including a carefully designed program of professional development assistance.<sup>146</sup> As stated in the Department's prospectus, "The primary purpose of bilingual education programs will remain the learning of English in all areas of the curriculum, while strengthening the development of the language and cultural skills necessary for America to compete effectively in a global economy. Proposed reforms strengthen the state role in the administration of the program; streamline program definitions for added flexibility; improve research, technical assistance, and evaluation; and emphasize professional development for teachers."<sup>147</sup> A primary purpose of the reauthorized program, as stated in the statute, is to help children and youth with limited English speaking proficiency to meet the same challenging state standards expected for all children and youth. As I stated at the opening of Hispanic Heritage Month in the Department: "Bilingual education has two key purposes: To make sure every child learns English and to make sure that

144. *Id.* § 10202(b).

145. *Id.* title IX-A.

146. *Id.* §§ 7102(c), 7141-7150. The new Title VII establishes four functional discretionary grant categories aligned with the Department's comprehensive educational reform efforts. These are: program development and implementation grants; program enhancement projects; comprehensive school grants; and systemwide improvement grants. *Id.* §§ 7111-7124. The fiscal year 1995 rescissions legislation rescinds \$38.5 million of the fiscal year 1995 appropriation, for Title VII-A, leaving an appropriation for that year of \$156 million. See 109 Stat. 194. The President requested \$200 million for fiscal year 1996. See FY 1996 Budget, at 32.

147. Prospectus, *supra* note 21, at VII-3.

every child maintains their academic learning in other subjects as they learn English."<sup>148</sup> Title VII-C of the ESEA affords assistance, under a newly administered program, for emergency immigrant education.<sup>149</sup> Title I-C and D constitute more effective initiatives in support of the education of minority children and neglected and delinquent youth, respectively.<sup>150</sup>

## XII. Cutting Red-Tape: Increasing Flexibility and Coordinating Efforts to Improve Teaching and Learning

### A. Flexibility.

The Goals 2000 Act is designed to provide greater flexibility to state and local agencies in the administration of federal programs and to reduce fragmentation that had come to characterize the formulation and administration of federal and other education programs. Providing greater flexibility in the use of federal funds is also an overarching purpose of the IASA. In its report for the IASA, the administration recommended adoption of a number of more effective approaches to improve teaching and learning by exercising flexibility and reducing burden for educational agencies.<sup>151</sup> In enacting the IASA, Congress substantially adopted these recommendations. They are contained in a new title XIV of the ESEA relating to general provisions. These provisions are regarding (1) optional consolidated state and local applications; (2) consolidation of administrative funds; (3) waivers; (4) state and local assurances; (5) uniform provisions relating to general requirements such as maintenance of effort and services to children in schools; and (6) authority to use ESEA funds for coordinated services.

What doors does Title XIV open for a state or local educational agency seeking flexibility, burden reduction, greater coordination and program integration to increased student achievement? The answer is a significant number.

1. *Consolidated plans.* A state educational agency has the option of submitting a consolidated state plan under one or more of a number of ESEA

148. ESEA § 7111(2); see *id.* § 7123(c)(1) (evaluation component tied to achievement state student performance standards); U.S. Department of Education, Remarks of Richard V. Secretary of Education, Hispanic Heritage Month, Sept. 20, 1995.

149. *Id.* §§ 7301-7309.

150. For a discussion of the contribution of the IASA to the education of children, see 140 CONG. REC. 514,174 - 514,180 (daily ed. Oct. 3, 1994) (remarks of Sen. Harkin).

151. ESEA, title IX, reprinted in H.R. 3130, 103rd Cong., 1st Sess. (1993).

152. Under § 14206(a), an LEA may use up to 5 percent of its ESEA funds for a coordinated program, in accordance with new title XI of the ESEA, for such activities as hiring a service. Section 14206(b) permits certain inter-program transfers (up to five percent) where funds are not to be needed for specified programs.

programs specified in section 14302 of the ESEA. The state that submits a consolidated state plan need not submit separate program plans or applications under the programs that the state includes in the consolidated plan. The consolidated state plan option, coupled with other innovations in Title XIV-C of the ESEA, is designed to encourage "greater cross-program coordination, planning, and service delivery under [the ESEA] and enhanced integration of programs under [the ESEA] with educational activities carried out with State and local funds."<sup>153</sup>

Recognizing the significance of this new authority, the U.S. Department of Education, early in the process of IASA implementation, issued preliminary guidance followed by a Federal Register notice setting forth proposed criteria for the submission of consolidated state plans under section 14302, as part of the collaborative process called for in the statute for developing such criteria.<sup>154</sup> The Federal Register notice describes a two stage process of plan submission and provides guidance regarding the content of both a preliminary and a final consolidated plan.<sup>155</sup> A central question that a state is invited to address is how the federal resources under the programs included in the plan would work together to support the state's specific educational goals and its efforts to enable teachers to perform better and students to learn more.<sup>156</sup> Use of a consolidated plan relieves states of the obligation to provide numerous plan or application descriptions called for in the relevant program statutes. However, absent a waiver, the state would be obliged to carry out the required activities to which the descriptions in question relate.<sup>157</sup>

States have recognized the advantages of submitting consolidated state plans. Fifty of 52 participating states (including the District of Columbia and Puerto Rico) submitted preliminary consolidated state plans to receive fiscal year 1995 funds under thirteen programs designated in the January 1995 Federal Register notice. This had the effect of substantially reducing the number of separate state plans that were submitted and of encouraging states to describe their plans for the use of federal funds in a comprehensive and coordinated way that relates to their strategies for the use of state and local funds and their own goals for education reform. States submitting preliminary consolidated plans also have the opportunity to describe their plans under the Goals 2000 legislation and to provide a detailed discussion of how those plans mesh with their proposed

153. ESEA § 14301.

154. 60 Fed. Reg. 3306, 3307 (1995).

155. *Id.* at 3307-09.

156. *Id.* at 3308.

157. *Id.* at 3307.

arrangements for the use of federal funds under the programs included consolidated plan.<sup>158</sup>

A similar opportunity to submit consolidated plans is afforded local agencies under section 14305 of the ESEA. Indeed, a state educational agency that submits a consolidated state plan under section 14302 must allow its LEAs to submit consolidated local plans or applications.<sup>159</sup>

2. *Consolidation of administrative funds.* While the consolidated plan does not authorize the commingling of program funds, section 14203 of the ESEA authorizes a state educational agency to consolidate administrative funds under certain specified programs if the SEA can demonstrate that "thirty percent of its resources come from non-Federal sources."<sup>160</sup> This option may be a qualifying state to reduce the burden of keeping separate time and records for state employees that split time between multiple federal or federal and state programs.<sup>161</sup> It may also serve to encourage program coordination and service delivery described above. Provision for consolidation of administrative funds is also made in Title XIV.<sup>162</sup>

3. *Waivers.* While submission of a consolidated plan or application for consolidation of administrative funds does not relieve the applicant of its responsibility to comply with program requirements, the SEA may request a waiver under section 14401 of the Act that does provide

For the first time, the ESEA authorizes the Secretary to waive any part of the ESEA or regulation under it "for a State educational agency, Indian tribe or school. . ." <sup>163</sup> A request for a waiver must show that the waiver will "increase the quality of instruction for students" and "improve the academic performance of students."<sup>164</sup> Waiver procedures require notice and information to the public.<sup>165</sup> Waivers may be granted

158. The introduction to the Texas preliminary state consolidated plan provides an example: "This preliminary consolidated state plan will build upon the statewide effort to raise academic standards and to provide local schools with maximum flexibility to determine the means to meet those standards. . . [It] details the intended use of the following [federal] fund sources to support educational reform while ensuring that all children, including those targeted by the fund, acquire the knowledge and skills needed to lead productive lives in the twenty-first century. . . [It] identifies common strategies across programs, including efforts to integrate funds and services."

159. ESEA § 14305(b).

160. *Id.* § 14203(a)(1).

161. See U.S. DEPT. OF EDUC., GUIDELINES FOR SUPPORT OF SALARIES AND RELATED PROGRAMS OF THE U.S. DEPT. OF EDUC. FOR ENTITIES GOVERNED BY OMB CIRCULAR A-87 (1979).

162. ESEA § 14203.

163. *Id.* § 14401(a).

164. *Id.* § 14401(b)(1)(B).

165. *Id.* § 14401(b)(3).

of three years, may be extended, and are subject to termination. The legislation provides a list of requirements that may not be waived (including such matters as equitable participation of private school children and teachers, parental participation and applicable civil rights requirements).<sup>166</sup>

The purpose of this authority is to eliminate barriers (arising from federal requirements) that impede quality instruction, academic performance, and implementation of comprehensive education reforms and to permit the Secretary to provide relief upon such a showing. The statute thus affords a level of flexibility that has not been available in the past. In essence, the waiver provision gives the Secretary of Education power to reduce red tape and eliminate needless requirements that impede teaching and learning. It represents a major change in the administration of federal education programs and contains the promise of enhanced flexibility for educational agencies that pursue this route. Through June 30, 1995, I have approved eleven waivers under the general waiver authority in section 14401 of the ESEA. Most of these waivers pertained to the eligible school attendance area requirements of section 1113 of the ESEA and were designed to permit temporary continuation of existing programs.<sup>167</sup>

4. *Ed Flex Partnerships.* Section 311(c) of the Goals 2000 Act provides for an Education Flexibility Partnership Demonstration Program. Under this program, the Secretary may grant up to six states the authority to waive certain federal statutory or regulatory requirements. The programs under which these waivers may be made include Titles I, II, IV, VI, and VII-C of the ESEA. The waiver authority is designed to assist SEAs and affected LEAs and schools in implementing state and local school improvement plans. To be eligible a state must have an approved Goals 2000 plan and must waive state statutory or regulatory requirements relating to education, while holding affected LEAs or schools accountable for student performance. The Secretary is authorized to select three states with a population of 3,500,000 or greater and three with a population of less than 3,500,000. As of this writing, four states, Ohio, Oregon, Kansas, and Massachusetts, have been approved for participation in the Educational Flexibility Partnership Demonstration Program.<sup>168</sup>

5. *Deregulation.* While specific provision for deregulation is not made in the IASA, the issuance of regulations only where absolutely necessary for the proper and appropriate administration of the program is a goal consistent with

166. *Id.* § 14401(c).

167. 60 Fed. Reg. 44390 (Aug. 25, 1995).

168. See 60 Fed. Reg. 44390-91 (Aug. 25, 1995) (Oregon).

the purposes of the legislation. Accordingly, in July of 1995, I indicate the Department planned to issue only 11 regulations under the IAS fewer than the 49 originally expected; at the same time, I announced the Department, with respect to all of its programs and activities, was committed to abolish or revise 93 percent of its regulations; of that, 56 percent were wiped out and 37 percent will be revised.<sup>169</sup>

6. *Uniform assurances.* A state or local agency may submit assurances covering many programs on a uniform basis. The uniform assurances XIV-C of the ESEA and uniform provisions in Title XIV-E have a goal—the avoidance of conflicting and inconsistent obligations regarding the same issue under different federal programs, thus relieving the burden of administrative uncertainty and enhancing efficient administration.<sup>170</sup>

#### B. Services for Private School Children

In particular, the new uniform provisions, contained in Title XIV-E of the ESEA, will help to ensure that private school children receive equitable services under all ESEA programs in which they should participate and under a language that does not vary, without reason, from program to program. The first time, the ESEA seeks to clarify the responsibilities of state and local agencies to provide equitable services to these children through general provisions cutting across the various titles of the act in question. These provisions set rules for the participation of these children, standards for by-pass, opt-out procedures, and by-pass determination procedures.<sup>171</sup> The requirements for consultation between LEA and private school officials have been clarified and strengthened.<sup>172</sup> Specifically, a state or local educational agency recipient must consult with "appropriate private school officials in the design and development" of a program on certain specified issues. The consultation must take place before decisions that affect private school children or teachers. The consultation must include a discussion of service delivery mechanisms.

169. U.S. DEPT. OF EDUC., FEDERAL EDUCATION REGULATIONS SLASHED BY A THIRD, GOALS FOR REINVENT 93 PERCENT OF RULES (July 21, 1995) (Press Release).

170. ESEA § 14303.

171. *Id.* § 14503.

172. *See id.* §§ 14503-14506. Under section 14504, if a state or local educational agency has failed to provide services to private school children on an equitable basis, or if the agency is unable to do so, the Secretary, in accordance with the procedures in Title XIV, may make to provide the services directly, thus "by-passing" the state or local agency.

173. *See id.* § 14503(c).

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The Department has consistently taken the position that, under Title I, the most efficient and effective method for serving children enrolled in private schools is the provision of services on the premises of those schools. Prior to the decision of the United States Supreme Court in *Aguilar v. Felton*, 473 U.S. 402 (1985), the Title I regulations permitted such services. In the *Aguilar* case, a majority of the Supreme Court held that the provision of services on the premises of church-related schools was inconsistent with the Establishment Clause of the first amendment to the United States Constitution and that a local educational agency (there the New York City school system) could not provide services in that manner. The Department of Justice, during the Carter administration, took a position in earlier stages of that litigation that such services were permissible. The New York City school system is presently seeking to reopen that case. While the ESEA makes provision for alternative methods of providing services, and the new uniform provisions described above are a positive step, the administration continues to believe that the decision in *Aguilar* precludes local educational agencies from providing equitable services in the most efficient and effective manner.

C. School Prayer.

Title XIV of the ESEA includes a new provision designed to preclude the receipt of federal funds by a state or local educational agency that "is adjudged by a Federal court of competent jurisdiction to have willfully violated a Federal court order mandating that such [agency] remedy a violation of the constitutional right of any student with respect to prayer in public schools. . . ." <sup>174</sup> In my view, this provision represents an effective protection for this constitutional right. It recognizes the immediate access to the courts in such cases, most likely in a court serving the community in question. Furthermore, the provision does not vest federal officials with inappropriate monitoring functions in this area and does not call for Department intrusion in LEA affairs, unless there has been a court order clarifying the agency's responsibility.

The language in the IASA, however, relates to only one aspect of a broader set of topics concerning religious expression in the public schools. In a memorandum for me and the Attorney General issued in July of 1995, President Clinton stated:

I share the concern and frustration that many Americans feel about situations where the protections accorded by the First Amendment are not recognized

174. *Id.* § 14510; see 140 Cong. Rec. S. 14150 (daily ed. Oct. 5, 1994, remarks of Sen. Kaszbaum).

or understood. This problem has manifested itself in our Nation's public schools. It appears that some school officials, teachers, and parents have assumed that religious expression of any type is either inappropriate, or forbidden altogether, in public schools.

As our courts have reaffirmed, however, nothing in the First Amendment converts our public schools into religion-free zones, or requires all religious expression to be left behind at the schoolhouse door. While the government may not use schools to coerce the consciences of our students, or to convey official endorsement of religion, the government's schools also may not discriminate against private religious expression during the school day.

That memorandum summarizes advice by the relevant agencies regarding a number of the principles applicable to religious expression in our schools. President directed me, in consultation with the Attorney General, to direct public school districts and school officials about the principles set forth in that memorandum—a step that I have taken.<sup>175</sup>

#### D. Amendments to the General Education Provisions Act

In addition, Title II of the IASA makes changes to the General Education Provisions Act (GEPA).<sup>176</sup> Among other things, the GEPA amendments increase the Department's flexibility with other federal agencies in carrying out joint funding projects. This should facilitate cooperative efforts with other different federal agencies. The GEPA amendments also remove restrictive rulemaking in a way that should facilitate the earlier award of grants in competitive programs, reduce record retention and other burdens, as well as promote educational equity by calling upon applicants to address barriers to participation in Department programs.<sup>177</sup>

175. 30 WEEKLY COMP. PRES. DOCS. 1227-1230 (July 17, 1995) (memorandum on religious expression in public schools, July 12, 1995); see also *id.* 1220-1227 (remarks at James Madison High School, Virginia). The memorandum states principles regarding student prayer and religious discussion (the Establishment Clause of the First Amendment does not prohibit purely private religious speech by students at graduation prayer and baccalaureates; official neutrality regarding religious activity; teaching about religion, the Bible or other scripture...); student assignments; religious literature; religious excusals; religious teaching values; and student garb. I communicated these principles to school superintendents nationwide on July 12, 1995. Both the National School Boards Association and the American Association of School Administrators reported to me that the guidelines contained in the memorandum have been very popular and reducing misunderstandings in local school districts regarding religious expression. These guidelines have been so popular that the National P.T.A. has prepared an abbreviated version of them to distribute across America.

176. 20 U.S.C. § 1221 et. seq. (1988 & Supp. IV 1992).

177. IASA §§ 236, 241, 247, 248.

### XIII. A Limited and Better Federal Assistance Role in Educational Improvement Across America

The tenor of the times and the legitimate national concern that government be as limited as possible, consistent with the national interest, compel us to assess the justification for each of our federal programs as federal programs. The IASA is no exception.

To evaluate the significance of the IASA in advancing both local educational improvement efforts and the achievement of the National Education Goals, it is necessary to respond to concerns that may be raised about the legislation; to demonstrate how the IASA addresses the central objectives that the administration spelled out when it submitted its reauthorization proposal; and to explain how the IASA builds upon the undeniable educational progress that we have made, while helping communities and schools to confront the problems that remain.

#### A. What the IASA Is Not.

To understand the potential of this new legislation and to allay some of the concerns that have been raised about it, we must understand what the IASA is *not*, as well as what it is.

- The IASA is *not* a vehicle to force states to adopt national content and student performance standards. The IASA does contemplate that state and local agencies participating in Title I of the ESEA will adopt their own challenging content standards in mathematics and language arts and in other core subjects so that Title I students have a chance to attain the same standards as other students in the state. However, the states and local school districts, not the federal government, will determine what these standards contain.<sup>178</sup>
- The IASA does *not* require a state to adopt national opportunity-to-learn standards. The IASA provides resources which state and local agencies can use to improve the educational opportunity they provide to their students, including those who are at a disadvantage.<sup>179</sup>
- The IASA does *not* mention or finance outcome based education (in the sense of "values clarification") or affect home schools.<sup>180</sup> It does emphasize

178. ESEA § 1111(b); see 140 CONG. REC. S14,150 (daily ed., Oct. 5, 1994) (remarks of Sen. Kassebaum; bill does not "mandate" national standards).

179. ESEA, titles I, VII, IX.

180. ESEA §§ 14512, 14508; see 140 CONG. REC. S14,150 (daily ed., Oct. 5, 1994) (remarks of Sen. Kassebaum; bill does not "affect home schooling" or mandate "outcomes based education").

academic achievement in core subjects and provides for a program to encourage character education.<sup>181</sup>

• The IASA does *not* deemphasize basic skills. On the contrary, it provides resources through which the nation can improve basic skills and build on them so that all children may learn the challenging content that they must learn if our nation is to compete and prosper.<sup>182</sup>

• The IASA does *not* diminish the role of parents. On the contrary, it promotes and encourages promising techniques to increase the role of parents, such as Title I school-parent compacts.<sup>183</sup>

• The IASA does *not* impose new and unreasonable burdens on state and local agencies. On the contrary, for the first time, it provides a concrete procedure for removing red-tape and regulations getting in the way of educational progress.<sup>184</sup>

• The IASA is *not* perfect. It represents the product of countless hours of good faith, honest, and dedicated service of Members of Congress of both parties, of committee and congressional staffs, of representatives of business and educational organizations, and, last but by no means least, of the staff of the U.S. Department of Education. It is also very much the product of President Clinton's dedication to improving education for all Americans.

• The IASA is *not* a panacea. No one piece of federal legislation can solve all of the educational problems facing this diverse nation. However, the IASA, taken with the other enacted legislative proposals of the U.S. Department of Education and with President Clinton's other initiatives to improve education for all people first, can, if properly and imaginatively administered, make a positive contribution to addressing effectively our most pressing educational problems.<sup>185</sup>

181. ESEA, title I-A and § 10103.

182. ESEA, title I.

183. ESEA § 1118. To promote greater family involvement in learning, in addition to making changes in the IASA, our department has helped launch a family involvement partnership involving 200 partner organizations. This partnership encourages businesses to be family friendly, helps schools to include parents in learning activities with their children, provides up-to-date information about ways to help their children learn, and engages religious and community organizations in family involvement in learning.

184. ESEA § 14401.

185. See Jack Anderson & Michael Binstein, *New Education President*, WASH. POST, C-1 (1994).

186. See 140 CONG. REC. S14,192, 14,193 (daily ed. Oct. 3, 1994) (remarks of Sen. Jeff Bingaman: "No act of Congress will cure all these ills. Their cure lies with the American people. But we will have failed if we do not give the people—the parents, the teachers and the students—the best tools we can. And as time has taught us, the strongest tool is a stronger education system.")

### B. The IASA and Its Connecting Principles.

One perspective for evaluating the IASA is the extent to which it reflects the key principles or directions which bind it together and which are described earlier in this article: high standards, teaching and learning, flexibility, school-parent-community links, and better targeting of resources.

#### *Fosters high expectations and standards.*

Students and schools rise to the expectations we have of them. High standards of achievement, discipline, and teaching translate high expectations into better teaching and learning. The programs reauthorized by the IASA are generally directed at encouraging and helping students to learn to high academic standards. For example, under Title I-A of the amended ESEA, a state or school district must develop or adopt challenging content standards and student performance standards (and aligned assessments) that will be used to carry out the program. The overall objective is to enlist separate programs serving distinct target populations into a broad-based effort to achieve high standards of teaching and learning. In addition, Title I students are to be assessed according to the same high standards to which all students in the state are subject.

#### *Encourages better teaching and learning.*

To be effective, federal education legislation must have a positive impact on the school building and the classroom, the sites where teaching and learning take place. The IASA meets this test. By responding in Title II of the ESEA to the need for sustained, high quality professional development, the IASA is designed to improve the quality of teaching in the classroom. By stressing a whole school improvement approach in Title I of the ESEA, the IASA will lead to a more effective use of resources in the schools that serve disadvantaged children. By encouraging the use of technology, Title III of the ESEA will promote the wider use of computers and other essential technological equipment in the classroom.

#### *Flexibility.*

Increased flexibility to match the educational needs of state and local agencies is a core goal of the IASA and the Goals 2000 Act. The new Title XIV of the ESEA affords greater flexibility to states in the administration of federal programs through new opportunities to submit consolidated state plans, consolidate administrative funds, request waivers of program requirements, and provide assurances in a uniform manner. Similar opportunities are available to local educational agencies. Expansion of the schoolwide program authority in Title I will broaden program and administrative flexibility for individual schools.

#### *Promoting better parent, teacher and school community connections.*

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The emphasis in the ESEA on developing new mechanisms for parent participation, coupled with our family involvement initiative, respond strongly to this direction. As I stated on the occasion of the release of the Department report, *Strong Families, Strong Schools*:

The American family is the rock on which a solid education can and must be built. I have seen examples all over this nation where two-parent families, single parents, stepparents, grandparents, aunts and uncles are providing strong family support for children to learn.<sup>187</sup>

*Targeting of resources.*

While the targeting of Title I funds is not as extensive as we had hoped other provisions of the IASA serve to sharpen the targeting of resource. For example, under Title II of the ESEA, professional development is no (subject to the provision of adequate funding levels) targeted on co subjects in a way that did not characterize past authorizations of th program. Moreover, the emphasis on high standards throughout permit targeting of funds on our greatest need.

**C. Does Prior Progress in Education Justify Confidence in the IA**

Attempting to end the 120-year-old bipartisan commitment to federal education, some argue that the federal programs have produced no educational gains and that the IASA merely extends unproductive pr These arguments, however, ignore positive evidence that we have made cant gains, during the period since substantial federal programs were le in conjunction with local and state improvement efforts, progress tha accelerated by the momentum created by the Goals 2000 Act, the Sc Work legislation, and the IASA. Recent assessments show gains in scie mathematics achievement, growth in achievement by minority group : reduction in drop-out rates, increased participation in courses cover academic subjects and in advanced placement courses. While there is be done, compared to the 1970s when performance was generally d we have turned the corner in education. This change in direction i attributable to our constancy in supporting federal assistance to t improvement and local and state efforts to achieve better schools extended period of time. The areas that have shown the most improvi those areas which we addressed with concrete actions during the past

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<sup>187</sup> U.S. Secretary of Education, Richard W. Riley, Address to the National Press (1994 at 1). See text *supra* following note 44.

*Reading literacy.* While any assessment of a subject may show an increase or decrease, we are making some gains in student achievement in reading as measured by certain key indicators. "In an international assessment of basic reading literacy, 9-year-olds from the United States performed better on average on the narrative domain than students from other large countries. At age fourteen, students in the United States scored higher on the expository domain on average than students in West Germany and Spain."<sup>188</sup> At the same time, the results of the most recent NAEP study of reading achievement in the United States are disappointing at the 12th grade in private, parochial and public schools and constitute a clear call for renewed effort and greater emphasis on reading literacy, as well as much more attention to reading at home and reading by parents to children, themes that I have been sounding before these latest results were announced.<sup>189</sup>

*Mathematics and science achievement.* Student achievement in mathematics is up. "Average mathematics proficiency [in the United States] improved between 1978 and 1992 for all age groups, with the largest improvements occurring among 9- and 13-year-olds."<sup>190</sup> In some areas this gain was particularly significant, as noted by the National Education Goals Panel.<sup>191</sup> Trends in science also show noteworthy improvements.<sup>192</sup> As reported by the U.S. Department of Education, "In 1992, average science achievement was higher at all three age levels than in 1982, the year before *A Nation at Risk* was published. In addition, the gap between male and female scores at ages 13 and 17 has decreased."<sup>193</sup>

188. U.S. DEPARTMENT OF EDUCATION, OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT, NATIONAL CENTER FOR EDUCATION STATISTICS, *THE CONDITION OF EDUCATION 1995*, at 62 (hereinafter *CONDITION OF EDUCATION*).

189. The 1994 NAEP reading study found that only one-third of high school seniors are proficient readers, a decline from 1992 levels; that 10 states showed significant declines in reading proficiency; and that about 30 percent of the seniors failed to reach even the lowest (basic) level. See U.S. DEPARTMENT OF EDUCATION, NATIONAL CENTER FOR EDUCATION STATISTICS, *1994 NAEP READING: A FIRST LOOK (1995)*; see also *Decline Found in Reading Proficiency of High School Seniors*, *NEW YORK TIMES*, Apr. 28, 1995, A18; see *CONDITION OF EDUCATION*, *supra* note 188, at 54. In addition to strengthening the Title I program we have taken other steps to confront this decline. A particular concern is the drop in reading performance by disadvantaged students during the summer when they are not in school. To address this aspect of the problem, I initiated a summer reading program, *READ WRITES \* Now*, in the summer of 1995. Four hundred thousand children were tutored by 100,000 tutors during that summer to improve their reading. We hope to reach 1,000,000 children in the summer of 1996 with additional volunteers and participation of community groups.

190. *CONDITION OF EDUCATION*, *supra* note 188, at 58.

191. NATIONAL EDUCATION GOALS PANEL, *THE NATIONAL EDUCATION GOALS REPORT (1994)*, at 32.

192. *CONDITION OF EDUCATION*, *supra* note 188, at 56.

193. *Id.* *The Condition of Education 1995* also reports that "[a] higher percentage of 9-, 13- and 17-year-olds demonstrated general science skills by reaching Levels 200 and 250 in 1992 than in 1982. In addition, more 17-year olds reached Levels 300 and 350 in 1992, exhibiting detailed knowledge and analytical understanding of scientific principles. . . ." *Id.*

David Grissmer, a RAND Corporation researcher who conducted a three-year study of educational achievement has been reported as confirming these results and observing: "Although we need to continue exploring ways to improve our schools, we also need to recognize that the average American student can read, write and solve mathematical problems better than ever."<sup>194</sup>

*Minority group achievement.* "Average mathematics proficiency" of American students was higher in 1992 than in 1973.<sup>195</sup> The gap in a mathematics proficiency between whites and their minority peers has declined over the last twenty years.<sup>196</sup> David Grissmer is reported to have observed: "... math achievement levels are higher today than in 1970, with the gains registered by blacks and Latinos."<sup>197</sup>

*Declining dropout rates.* Overall, the dropout rate for 16- to 24-year-olds declined from 14 percent in 1982 to 11 percent in 1993. Dropout rates declined between 1982 and 1993 by 4 percentage points for whites and 5 percentage points for African Americans (although dropout rates for Hispanics are high and are not declining).<sup>198</sup>

*Overall educational attainment.* The United States leads the world in educational attainment. Among those 25-64, in 1992, 23.6 percent had earned a bachelor's degree.<sup>199</sup> Postsecondary enrollment and graduation rates for young students have increased since 1991, a higher percentage of young people had completed higher education in the United States in 1992 than their counterparts in other industrialized countries.<sup>200</sup>

*Core subject participation.* Course-taking has improved significantly between 1982 and 1992, the percentage of high school graduates earning recommended units in core courses increased sharply from 13 to 47 percent. The increase occurred for both sexes and all racial/ethnic groups.<sup>201</sup> Participation in advanced placement has increased dramatically since 1982, rising

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194. *Perspective on Schools: Sinking Scores? Not in the Numbers*, LA Times, May 28, 1993 (interview with David Grissmer).

195. *CONDITION OF EDUCATION*, *supra* note 188, at 58.

196. *Id.* at 58.

197. *Los Angeles Times* interview *supra* note 194. Grissmer attributes this in part to educational programs. "Certainly, the additional resources invested in minority programs are significantly higher scores. Further research is needed to verify whether this is, indeed, cause and effect."*Id.*

198. U.S. DEPARTMENT OF EDUCATION, *TURNING THE CORNER: POSITIVE TRENDS IN EDUCATION* (1993).

199. *CONDITION OF EDUCATION*, *supra* note 188, at 74.

200. *Id.* at 72, 74.

201. *Id.* at 78.

140,000 to 450,000 high school students. Especially impressive is the growth in participation of minority students; in 1994, 26 percent of advanced placement candidates were minority students, compared to 11 percent in 1982.<sup>202</sup>

*SAT Scores.* The most recent scores on the Scholastic Assessment Test (SAT), the test administered each year to students seeking admission to institutions of higher education, show the largest one-year gains in verbal and mathematics scores in over ten years. The average SAT score of 910 nationally is the highest since 1974, a year when the score was 924 and fewer students took the test, a factor that tends to inflate scores. I attribute these heartening gains to students taking harder courses. Increased numbers of students who took the test were reported to have indicated that they had taken advanced courses in core subjects. I also believe that these positive results reflect our efforts to encourage learning to high academic standards and to state and community efforts to administer local, state and federally assisted programs in an effective way.<sup>203</sup> Both minority participation and performance on the SAT have increased. Minority students as a percentage of all test takers increased from 18 to 31 percent between 1982 and 1994. Math and verbal scores increased across almost all racial and ethnic groups from 1982 to 1994.<sup>204</sup> In the most recent SAT results, scores for African-American and Hispanic students rose. However, there remains a gap between the scores for these students and other test takers that we must continue to work to close.<sup>205</sup>

*Results from states involved in sustained, comprehensive reform.* States that have embarked upon ambitious and well conceived systemic reform efforts have begun to enjoy positive educational results. Kentucky and my native South Carolina are examples.<sup>206</sup> As Terry Peterson, my able Counselor in the

202. DEPT OF EDUCATION, *supra* note 198; see CONDITION OF EDUCATION, *supra* note 188, at 80. This progress is the subject of a recent publication of the NCES, based on findings from the 1994 Condition of Education, entitled "High School Students Ten Years After a 'Nation at Risk'." The following summary profile appears:

Since the publication of *A Nation at Risk*, a greater proportion of high school students are taking core courses, and a greater proportion are taking high-level courses in those subjects. More high school students are taking advanced placement examinations, and fewer are dropping out between 10th and 12th grade. Mathematics and science achievement have increased since the 1980s. Finally, a greater share of students are aspiring to and attending college after they graduate from high school. *Id.* at 11. 203. *SAT Scores Rise Here, Nationally; D.C. Posts 11-Point Gain*, WASH. POST, Aug. 24, 1995, at C 1.

204. DEPT OF EDUCATION, *supra* note 198; see CONDITION OF EDUCATION, *supra* note 188, at 68.

205. U.S. DEPT OF EDUC., Press Release, *Condition of Education Improving, Riley Reports*, August 21, 1995 (discusses positive results from 1995 Condition of Education Report; indicates that although minority students have made significant gains, a gap remains between white and minority test scores that must be addressed through Title I, Goals 2000 and other programs).

206. U.S. DEPT OF EDUC., Richard W. Riley, Second Annual State of American Education Address

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(Feb. 1995).

Department and former Executive Director of the South Carolina Business Education Committee, has observed:

South Carolina's reform efforts have resulted in a number of advances in school and student performance between 1983-90:

- Improved student writing performance,
- Higher student and teacher attendance,
- More students entering college and passing college freshman courses,
- Higher achievement in the basic skills,
- Many more students taking Advanced Placement courses.<sup>207</sup>

I do not mean to minimize, by these observations, the length of the road still must travel.<sup>208</sup> The 1994 NAEP reading survey mentioned above is unmistakable evidence as to the substantial task of educational improvement that lies before us. I do mean to emphasize my belief that we are making significant progress and that a retreat from the IASA and other recent legislative accomplishments would be a mistake that would threaten that progress and impede us from making gains in those areas where enhanced academic efficiency is so vital to individual and national economic growth and quality of life.

Causal relationships are difficult to prove. However, it is no accident, in my view, that the positive results sketched above took place during a period of increased federal aid (not federal control) and increased state and local efforts to improve education; during a period of emphasis on raising standards in the case of mathematics,<sup>209</sup> application of high content standards; and during a period when a number of communities began to embark on the type of reform envisaged in the Goals 2000 Act.

(Feb. 1, 1993) at 3 ("Kentucky, a state that has done so much in school reform, is now reporting improvement in mathematics, reading, science, and social studies based on their new, challenging standards."); see also Riley, *supra* note 1, at 306-308.

207. Terry K. Peterson, *School Reform in South Carolina: Implications for Wisconsin's Reform* (WISCONSIN CENTER FOR EDUCATIONAL POLICY, 1991) at 8. The positive results in South Carolina were in direct response to the comprehensive reforms formulated and funded by the South Carolina Education Improvement Act of 1984 and the grassroots involvement in developing the reforms in that Act. See Riley *supra* note 1 at 306-309.

208. See Riley, *supra* note 1, at 310-312 (discussion of areas of need for educational improvement).

209. In the case of mathematics, federal assistance took the form of a discrete program, D. Eisenhower Mathematics and Science Education Act, tit. II-A of the ESEA (as in effect by amendment of Pub. L. No. 103-382), 20 U.S.C. §§ 2981-2993 (Supp. 1988). Title II of the ESEA in the IASA carries forward a program of assistance for professional development in mathematics, as well as other core subjects. See text *supra* following note 90.

As I observed in my second annual State of American Education address on February 1, 1995: "I believe that we are, at long last, turning the corner . . . moving from being a nation at risk to a nation with a hopeful future. We are starting to win the battle for excellence and good citizenship in American education."<sup>210</sup>

#### XIV. Why the IASA Can Succeed

With respect to the IASA itself, Senator Jeffords aptly observed during the debate on the conference report: "Chapter I works."<sup>211</sup>

However, the exciting positive possibilities of the IASA will be undermined if efforts to cut funding for education and to dissipate federal programs to improve education are carried out.

A number of factors convince me that the IASA is designed to build upon principles of progress and successful experience in education:

The IASA represents a coherent set of federal education programs that build on investments in what works and that create incentives for local and state actions to address local and state needs through comprehensive education reform efforts within the overall framework of the Goals 2000 Act.

The IASA gives strong and appropriate emphasis to enhancing the quality of teaching by investing in sustained, intensive, high quality professional development in all the core content areas, an element that has in the past been lacking.<sup>212</sup>

The IASA, for the first time, affords a basis for reducing red-tape and regulations in a way that will provide state and local agencies greater flexibility to address educational problems.

The IASA substantially revises the largest federal investment in K-12 education, Title I of the ESEA, in a way that will make it a more effective tool to rigorously teach basic and advanced skills to children in high-poverty schools, through such mechanisms as an expanded schoolwide program authority, extended learning time strategies, more effective parental involvement, and clear ties to challenging standards of achievement, discipline, and teacher quality. As Senator Kassebaum observed during the debate on the adoption of the conference report on the IASA: "[The IASA] . . . promotes a strong belief of mine that children will rise to our level of expectations, and we need to demand

210. Riley, *supra* note 206, at 2.

211. 140 Cong. Rec. S14,392, 14,193 (daily ed. Oct. 5 1994).

212. ESEA, title II.

more of all of them."<sup>213</sup>

The IASA calls for increased funding levels in key areas and has accompanied by higher appropriations in the fiscal year 1995 appropriations act. For fiscal year 1995, under the leadership of President Clinton, Congress in 1994 increased the appropriation for Title I of the ESEA (as amended by the IASA) by \$321 million, as compared with FY 1994. It increased the appropriation for the Goals 2000 Act for fiscal year 1995 by \$298 million. At the same time, the FY 1995 deficit was projected to be reduced to \$203 billion, as compared with \$203 billion in fiscal year 1994 and \$290 billion in fiscal year 1992.<sup>214</sup> Through his veto action on the fiscal year 1995 rescission legislation in the 104th Congress, President Clinton has substantially protected these gains; the legislation that he approved involved, for example, the rescission of \$70 million in funding for the Goals 2000 Act state and local activities.<sup>216</sup>

The IASA will be administered and implemented by a more effectively "reinvented" Department of Education. Within the framework of Vice President Gore's National Performance Review, the Department, under the vigorous inspired leadership of Deputy Secretary Madeleine Kunin and Undersecretary Mike Smith, has established reinvention teams designed to make the Department a higher performing organization that is focused on students, parents, and educational institutions that serve them, a transformation that should be positive upon its implementation of the IASA.<sup>217</sup>

The IASA will be administered in the context of our Family Involvement Initiative described more fully in the earlier article.<sup>218</sup>

The IASA is the product of a *mainstream* bipartisan consensus as it is needed to move education forward in America, involving programs administered by the Department including the Goals 2000 Act, the School-to-Work Opportunities Act (administered jointly with the Department of Labor

213. 140 CONG. REC. §14149, 14150 (daily ed. Oct. 5, 1994).

214. Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1995, Pub. L. No. 103-333; H.R. REP. NO. 733, 103RD CONG., 2D SESS. 88-89 (1994). The fiscal year 1995 rescissions legislation rescinded \$10 million of the amount appropriated for fiscal year 1995 for state and local education systemic improvement [under title III of the Goals 2000 Act]. The rescission was \$60 million less than the comparable figure in the legislation that the President vetoed. Compare Pub. L. No. 104-19 with H. DOC. NO. 104-83, 104TH CONG., 1ST SESS., at 25.

215. EXECUTIVE OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 1996 (1995) at 33,173; WASH. POST, Oct. 26, 1995 D-11.

216. See text following note 114.

217. See U.S. DEP'T OF EDUC., Strategic Plan: Highlights (Oct. 1994).

218. See Riley, *supra* note 1, at 355.

Safe Schools Act, the OERI reauthorization legislation, and the William D. Ford Student Loan Reform Act of 1993.

The IASA and our other education initiatives listed above, are in turn part of a broader strategy to invest in quality education initiatives and initiatives administered by agencies other than the Education Department which vitally relate to and potentially support education, including initiatives to assist working and middle-income families (the amendments to the Earned Income Tax Credit provisions of the Internal Revenue Code);<sup>219</sup> the empowerment zone-enterprise community initiative;<sup>220</sup> the National and Community Service Trust Act of 1993;<sup>221</sup> the Head Start reauthorization legislation;<sup>222</sup> the successful efforts to stimulate economic growth and stability through the deficit reduction and other provisions of the Omnibus Budget Reconciliation Act of 1993 related to the economy;<sup>223</sup> the job creating aspects of the North American Free Trade Agreement;<sup>224</sup> the crime prevention and control provisions of the Violent Crime Control and Law Enforcement Act of 1994;<sup>225</sup> the continuing efforts to support families through initiatives such as the Family and Medical Leave Act of 1993<sup>226</sup> and, most importantly, the administration's proposals for a Middle Class Bill of Rights.<sup>227</sup>

The American people support investments in and improvement in quality for education. While they favor deficit reduction, they do not favor reducing the deficit through cuts in education spending.<sup>228</sup> In the information and technological age in which we are living, this is no time to reduce our emphasis on education at the federal, state, or community level.

### XV. The IASA and Bipartisanship

The considerations described above persuade me that, if the IASA and our other education initiatives are adequately funded, they will contribute signifi-

219. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13131.

220. *Id.* §§ 13391, 13761.

221. Pub. L. No. 103-82 (1993).

222. Head Start Act Amendments of 1994, Pub. L. No. 103-252, title I (1994).

223. Pub. L. No. 103-66 (1993).

224. *See* Pub. L. No. 103-182 (1993).

225. Pub. L. No. 103-322 (1994).

226. Pub. L. No. 103-3 (1993).

227. *See* EXECUTIVE OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 1996, at 13-25 (middle class tax cut and other initiatives) (1995); *see* Riley, *supra* note 206, at 6 ("The President's proposals to allow a tax deduction for college tuition, to expand IRA withdrawals for education, to create a \$2,600 skills grant that empowers working Americans and a \$500 child tax credit—are all part of the same effort to make sure every American has a chance to be part of the American dream.").

228. WASH. POST, Jan. 6, 1995, A-8 (two of three respondents would not support a balanced budget if it meant cutting education or social security).

cantly to the nation's efforts to improve our schools, student achievement, discipline and to make progress toward the National Education Goals.

The positive results to be expected from the IASA are in no small measure due to the strong bipartisanship that produced it. This is a factor that enormously gratifying and a positive force in and of itself. Senator Ke summed it up during the floor debate on the conference report:

The passage of ESEA later today will be the culmination of two years of impressive bipartisan cooperation and accomplishment in all aspects of education. President Clinton can be proud of this record, and so can Democrats and Republicans alike in Congress. In this Congress, after ESEA passes, the Senate and the House will have completed action on six major bills that will strengthen all aspects of education for all students—preschool through college.

In years to come, this Congress may well be known as the education Congress.<sup>229</sup>

This bipartisanship in education legislation must absolutely be sustained if we are to address the searing educational problems which we must address in the Twenty-first century. Senator Jeffords accurately and eloquently put these problems in the waning hours before the Senate approved the conference report:

As I mentioned earlier, we have 30 to 80 million people in this country who are illiterate or functionally illiterate. In my mind, we cannot ignore this issue. Many of these citizens do not even have the skills to work in entry-level jobs. Clearly, if we do not provide them with an opportunity to gain the knowledge they need to succeed in the workplace, then this Nation will not be capable of keeping the jobs we have, creating new jobs and bringing more higher-paying jobs into the country.

As I look to the future, I see serious problems in the area of crime, in the area of welfare reform, with the economy. As we near the next century, the only hope for solving these problems seems to be to provide States with the necessary resources, in the form of planning grants or otherwise to help them meet the goals we have set out by the year 2000.<sup>230</sup>

229. 140 CONG. REC. S 14,170 (daily ed. Oct. 5, 1994); see *id.* at S 14,205 (remarks of Sen. Durr H 806 (daily ed. Feb. 24, 1994 (remarks of Rep. Gunderson: "President Bush, to his credit, and now by President Clinton, began that attempt at bipartisan revolution in education through the Goals program. . .")); see 31 WEEKLY COMP. PRES. DOCS. 1500 (Sept. 11, 1995) (remarks of Pres. Clinton to and parents of Abraham Lincoln Middle School) (describes bipartisan support for Goals 2000, H School-to-Work, direct student loans, and Americorps).

230. 140 CONG. REC. S 14,194.

The vote on final passage of the IASA was a strong bipartisan vote as was the vote on the Goals 2000 Act.

### XVI. Maintaining the Commitment and Staying the Course

Madeleine Kunit, my constant partner as Deputy Secretary in the legislative and management accomplishments that I have described, has eloquently described this pivotal role of education in opening doors to the American mainstream:

I know from my personal experience what education has meant to me. When I came to this country as an immigrant with my brother and mother, not speaking English, it was the educational system of this nation which opened every important door to us. Without it, we would have deprived ourselves of the upward mobility which gave every immigrant and every American, no matter how humble his or her beginnings, the genuine hope for a better life.

Without access to education, the dream would have died. What was true for my brother and me is true for the next generation of Vermonters.<sup>231</sup>

It is also true for citizens of all of our communities and states in America.

Because of the contribution of education to the achievement of the American dream that Madeleine Kunit eloquently described in her State of the State address, we must maintain our commitment to education and stay the course that the Goals 2000 and IASA legislation have set. Legislative determinations made in the current Congress that would substantially reduce federal funding for education are inconsistent with that commitment.<sup>232</sup>

The analysis of the IASA in this article would be incomplete if it did not address these developments and their potential impact on the IASA and on other efforts to assist states and communities in achieving their own education goals. Budgetary reductions can have a profoundly negative influence on the administration of the IASA, a factor that must be considered in assessing the promise of that important legislation for our schools and communities. Moreover, our experience to date with the enactment and administration of the IASA is relevant to the fiscal debate about the federal role in education. It is therefore appropriate for discussion here.

231. MADELEINE KUNIT, *LIVING A POLITICAL LIFE* 384 (1994) (quoting from third State of the State address by Governor Kunit to the Vermont Legislature, Jan. 8, 1987).

232. 141 CONG. REC. H 6273, H 6286, 6295 (daily ed. June 26, 1995); the conference report on H. CON. RES. 67, the concurrent resolution on the budget for fiscal year 1996, as adapted by the Congress (conference report levels compared to fiscal year 1995).

### A. Reducing the Education Deficit.

Under the fiscal year 1996 concurrent resolution on the budget, the recommended budget authority amounts for function 500 (the budget category includes education as well as training and social services programs) would be reduced by approximately \$69 billion for the seven year period, 1996-2002 as compared with the fiscal year 1995 level.<sup>233</sup> In order to achieve these reductions, the House budget resolution assumed substantial reductions in funding for a number of the ESEA programs discussed in this article.<sup>234</sup> The difference is even greater if consideration is given to the President's fiscal year 1996 budget which calls for increased funding for key education investments, while recommending reductions in the total number of programs administered by the Department.<sup>235</sup>

If the provisions of the congressional budget resolution are implemented in this and succeeding fiscal years through major reductions in appropriation levels for critical IASA and other programs, the efforts of communities and states to improve their schools, launched in 1993 and 1994, will be profoundly impacted and set back.

To avoid such a result, President Clinton vetoed H.R. 1158, a bill that would have rescinded fiscal year 1995 appropriations for certain education programs. He explained his reasons for this action as follows:

This disagreement is about priorities, not deficit reduction. In fact, I want to increase the deficit reduction in this bill. H.R. 1158 slashes needed investments for education, national service, and the environment, in order to avoid cutting wasteful projects and other unnecessary expenditures. . . . For example, H.R. 1158 . . . would deprive 2,000 schools in 47 States of funds to train teachers and devise comprehensive reforms to boost academic standards.<sup>236</sup>

The result of this veto was the restoration, in rescissions legislation that was subsequently revised, sent to the President and signed, of substantial do-

233. *Id.* at H 6286.

234. See H.R. REPT No. 104-120, 104th Cong., 1st Sess. 69-78 (1995) (report of the House Committee on the Budget on H. Con. Res. 67 (contains detailed discussion of assumptions underlying House vote on H. Con. Res. 67, including assumed eliminations or reductions for Goals 2000 Act, Title I concept grants, drug-free schools, and bilingual education).

235. U.S. Education Department, *The Fiscal Year 1996 Budget*, at 1-10 (1995) (discusses requested increases for Goal 2000, Title I, professional development, safe and drug free schools, technical assistance and charter schools).

236. 141 CONG. REC. H5682, H5683 (June 7, 1995, reprinting H. Doc. No. 104-83, 104th Cong. Sess. (1995)) (emphasis added).

to the fiscal year 1995 budget, including significant amounts for the Goals 2000 Act, Drug-Free Schools and School to Work programs.<sup>237</sup>

The unprecedented reductions in education spending contemplated in the concurrent budget resolution for fiscal year 1996 also pose dangers to our progress in education. I appreciate fully the need to reduce the budget deficit. However, that reduction should not be made by steps that will undermine our efforts to reduce the nation's continuing education deficit. To trade one deficit for another would jeopardize the future of our children and our nation. As the President told a gathering of Presidential Scholars in June of 1995: "The budget deficit is not the only deficit we have. We still have some education deficits. . . . We have to make some investments even as we close the deficit."<sup>238</sup>

Reducing funding for essential education programs constitutes dubious fiscal, as well as educational, policy. The nation's ability to raise revenues to support its expenditures and carry its national debt depends in the long term on economic growth. Economic growth requires a high quality education in all communities and states that adequately prepares students for the workplace and America to compete in a highly technological marketplace. Short term reductions in our investment in education to meet current deficit concerns will inevitably reduce our ability to avoid deficits throughout the 21st century. Effective investment in education, on the other hand, will enhance economic growth and provide those who must share the obligation of contributing to the federal revenues with greater earning capacity with which to do so.<sup>239</sup>

The President has set the nation on a course that would avoid harmful reductions while still effectively addressing the federal budget deficit. The President's budget plan presented on June 13, 1995 would balance the budget within a reasonable time frame and, at the same time, provide necessary resources to maintain and improve our investment in education.<sup>240</sup> In announcing

237. Pub. L. No. 104-19 (1995); H.R. Doc. No. 104-83, 104th Cong., 1st Sess. 25 (1995).

238. 31 WEEKLY COMP. PRES. DOCS. 1089, 1092 (June 26, 1995).

239. President Clinton has consistently emphasized that "education is more important to the economic future of individual Americans and our entire country than it has ever been." 31 WEEKLY COMP. PRES. DOCS. 1089, 1092 (June 26, 1995); *id.* at 1501, (Sept. 11, 1995); ("[E]ducation is more important today. . . to our future than it has ever been in the entire history of the United States, and we have to act on that fundamental truth as a people.") (remarks to students and parents of Abraham Lincoln Middle School, Selma, California, Sept. 5, 1995). That assessment is supported by our own Department's statistics. See THE CONVENTION OF EDUCATION 1994, at 98 (median earnings of persons who had not completed high school substantially less than those of high school graduates; earnings advantages of college graduates substantially greater and increased between 1974 and 1992; for males the ratio of annual earnings of wage and salary workers 25 to 34 with 16 years or more years of school to those with 12 years of school was 1.60 and for females was 2.0); *id.* at 277.

240. Executive Office of the President, The President's Economic Plan, A Balanced Budget That Puts People First (June 13, 1995); EXECUTIVE OFFICE OF PRESIDENT, MID-SESSION REVIEW OF THE 1996 BUDGET

that plan to the American people, the President summarized its central message:

We're at the edge of the new century, living in a period of rapid and profound change. And we must do everything in our power to help our people build good and decent lives for themselves and their children.

These days working people can't keep up. No matter how hard they work, one, two, even three jobs, without the education to get good jobs, they can't make it in today's America. I don't want my daughter's generation to be the first generation of Americans to do worse than their parents. Now, balancing our budget can help to change that, if we do it in a way that reflects our values and what we care about the most—our children, our families, and what we leave the generations to come.

That's why my budget has five fundamental priorities. *First, because our most important mission is to help people make the most of their own lives, don't cut education.* . . .<sup>241</sup>

On the contrary, as the President subsequently told a gathering of the President Scholars, "cutting education would be like cutting the defense budget at height of the cold war. . . . I propose in my balanced budget to *increase* over investment in education and training by \$40 billion in 7 years."<sup>242</sup>

Some have put forward a broad block grant approach as a suitable alternative to the provisions for adequate funding and solid educational change that have been made in the IASA and related legislation. This alternative, however, raises questions that I have addressed in testimony before the House of Representatives on the future of the Department. There, I observed:

First, we believe that block granting nearly all Federal elementary and secondary education programs is merely the first step toward dramatically reducing—and possibly even eliminating—Federal financial assistance for elementary and secondary education. . . .

Second, the block grant concept would preclude the targeting of Federal education funds to disadvantaged populations that characterizes most of

(July 28, 1995); see also Office of the White House Press Secretary, Press Briefing by John Hilkey, Jan. 1996; Washington Post, Jan. 12, 1996, at A-10 (excerpts from Jan. 11th news conference by President regarding, among other things, balancing the budget).

241. 31 WEEKLY COMP. PRES. DOCS. 1051 (June 19, 1995) (Address to the nation on the plan to balance the budget, June 13, 1995) (emphasis added); see *id.* 1501 (Sept. 13, 1995) ("I have given Congress a plan which recognizes both these fundamental truths—that we have to balance the budget and that we have to provide for education and invest in our young people's future.")

242. 31 WEEKLY COMP. PRES. DOCS. 1089, 1092-1093 (June 26, 1995) (followed by discussion of increases for Head Start, Goals 2000, Pell grants, national service, training for unemployed workers) (emphasis added).

our current programs. In theory, States would be free to continue favoring poor students and communities in allocating block grant funds. However, my own experience as a former Governor, as well as the fact that over half of our States are currently involved in school finance litigation, tells me that the reality is far different, and that States may face great difficulty in allocating education funds to those students with the greatest need for assistance. . . .

And third, the block grant approach complicates efforts to ensure accountability for the use of Federal funds. The "no-strings" block grant . . . could result in the use of Federal dollars for activities of little or no educational value. . . .<sup>243</sup>

#### B. Next steps.

I have urged in this article that the IASA, taken with other recently enacted federal laws, particularly the Goals 2000 Act and the School-to-Work Opportunities Act, can have a positive impact on improving American education and making progress toward the achievement of the National Education Goals. These laws are designed to invest in local communities and states by helping them to build partnerships and put in place effective practices to augment their local efforts. While taking some justifiable pride in our legislative accomplishments, we should always be seeking ways to build upon and improve them to better serve parents, students, teachers, and taxpayers.

What direction should that search take? In the first place, we must seek a reaffirmation of the current limited federal role in education and the policy of investing in effective efforts to improve the quality of education. Some contend that there should be no such role, that federal programs should be largely eliminated, and that federal activities in education do more harm than good. We must confront these arguments directly and resolve them. How can the 120-year history of federal assistance to improve education, including strong bipartisan votes on important initiatives in 1993 and 1994, be squared with proposals to eliminate or substantially reduce these important efforts? Parents, school administrators and teachers deserve a solid, certain, long-term commitment from the national, state and local levels to help them to improve education.

I maintain that, while primarily a state and local function, "education is a national priority," that "education must be part of our national purpose," and that "our economic prosperity, our national security, and our nation's civic life

<sup>243</sup> U.S. DEPT OF EDUC., Testimony of Secretary Richard W. Riley on Departmental Reorganization before the Committee on Economic and Educational Opportunities, June 29, 1995, at 18-19.

have never been more linked to education than they are today as we enter the Information Age of the 21st century."<sup>244</sup> With these principles, few disagree.

I also believe that without national leadership accompanied by significant federal financial contributions and incentives to supplement and complement state and local efforts, our educational goals cannot be achieved, at least in many communities in this country that lack the resources necessary to do the job.<sup>245</sup> If, despite these considerations, the nation abandons its traditional commitment to education through federal leadership and significant financial assistance, we will pay dearly in lost educational and economic opportunities. As I stated on the occasion of positive news regarding the 1995 ACT assessment scores: "This is not the time to withdraw a longstanding, bipartisan commitment to help states and communities improve their schools. This is not the time for retreat."<sup>246</sup> The bipartisan commitment that I seek is particularly vital because the nation faces rising K-12 enrollments.<sup>247</sup>

The alternative appears to me to involve virtual elimination of the federal role in any coherent sense, a substantial reduction of funds, the distribution of the remainder in a way that provides for little or no accountability to the federal taxpayer, a diminution of educational benefits for all of our students and in particular our most disadvantaged children, and steps that will imperil our children's health and abilities in an information age. Abandonment of a meaningful federal role would jeopardize our future because, I believe, the progress we have made in education over the last thirty years is, at least in part, attributable to the effective and prudent exercise of that role over the years through such major programs as student financial aid, IDEA, the Perkins Act and Title I, to mention a few, now strengthened by the advent of the Goals 2000, School-to-Work, national service legislation, along with the IASA that is the subject of this article.

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244. Testimony of Richard W. Riley, U.S. Secretary of Education, before the House Committee on Economic and Educational Opportunities, *The Federal Role in American Education*, Jan. 12, 1995; see statement Terrel H. Bell, former U.S. Sec't of Ed., (July 13, 1995).

245. While, in the United States as a whole, federal assistance amounts to 6.6 percent of total local elementary and secondary budgets, in at least 10 states, in 1991-92, more than 10 percent of revenue for public elementary and secondary schools was derived from federal sources. See U.S. DEPT. OF EDUCATION, NATIONAL CENTER FOR EDUCATION STATISTICS, *DIGEST OF EDUCATION STATISTICS 1994*, at Table 158.

246. U.S. Dep't of Educ., Press Release, Statement by U.S. Secretary of Education Richard W. Riley regarding 1995 ACT assessment scores, Aug. 17, 1995; see Weekly Comp. Pres. Docs. 1541, 1543 (Aug. 18, 1995) (remarks by Pres. Clinton to the community of Southern Illinois University).

247. U.S. Dep't of Educ., Press Release, Condition of Education Improving, Riley Report, Aug. 1995, at 2 (K-12 enrollments will rise from 50 million this fall to 55 million by 2002).

In calling for a reaffirmation of a limited but meaningful federal role, I do not call for an assertion of federal control. On the contrary, I have said "[i]n the past the federal government has been far too prescriptive in dictating to states and local school districts how they should run their schools."<sup>248</sup> Rather than abandoning the field, however, I have called for "a new partnership with states and communities" that encourages a first-class education for every child.<sup>249</sup> Only through such a partnership, I believe, can we make the kind of progress that our children and grandchildren deserve, as summarized in the National Education Goals, themselves a product of a state-federal partnership.

In suggesting that we should continue to search for ways to improve the IASA, which is an important component of that partnership, I think several principles should be kept in mind. Our U.S. Department of Education will be working to change our programs and operations to better assist schools, communities, and states by:

- making it easier to link the Goals 2000 Act, School-to-Work and assistance to elementary and secondary education with local and state improvement efforts;
- establishing at all levels of education better mechanisms to reward successful school performance while creating disincentives for school failure;
- sharpening our focus by eliminating programs that are not needed or not working and that dilute our improvement efforts;
- building upon the important flexibility mechanisms we have created in order to provide even wider flexibility to local agencies and schools to do their jobs better; and
- improving targeting to areas of greatest need and potential for best results.

In short, we must maintain the commitment to the priorities and directions that guided our development of the IASA proposals and that make it significant and differentiate it from prior initiatives. These directions include particularly our emphasis on connecting use of federal resources to state and local development of high content and performance standards and to teaching and learning and our insistence that disadvantaged children not be trapped by the application of a set of standards less rigorous than those applied to all students. If we

<sup>248</sup> Riley *supra* note 244, at 10.  
<sup>249</sup> *Id.*

adhere to those priorities and directions, I believe that the IASA will have a positive and lasting impact on the present and future generations of American students. That belief, however, is posited on my conviction that we will maintain our commitment, that we will stay the course, and that we will permit the important changes made by the IASA to take hold over the period of the reauthorization that Congress adopted. Without that constancy, the bright promise of the IASA will prove elusive. We cannot afford such lost opportunity, particular in the light of recent data that shows that we are making demonstrable progress and turning the corner in education.

If the IASA fulfills this promise, it will be an important component of President Clinton's bipartisan education agenda: greater access to higher education for students, safer schools, greater parental involvement, higher standards, quality teaching, and student preparation to meet the challenges of today's jobs. My recent back-to-school message summarizes my overall views as to how we should achieve that agenda:

We need to think—for the long term—how we can help the generation that is entrusted to our care to get the education they deserve to be ready for the 21st century. This requires a common vision, common action, and a commitment to reach beyond politics to find common ground.

For it is my very strong belief that all across America, there are young men and women who want an education, who are praying for an education, who are striving for an education of excellence. And though they are not here today, they ask this question: "Will you have this as your national purpose? Will you make our future America's priority?"<sup>250</sup>

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250. U.S. Dep't of Educ., Statement of Richard W. Riley, U.S. Secretary of Education, *America Goes Back to School*, National Press Club, Washington, D.C., Sept. 7, 1995, at 7.